



amnesty international australia

Submission to the

The Corporations and Markets Advisory Committee
regarding

DIRECTOR'S DUTIES & CORPORATE SOCIAL RESPONSIBILITY

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Submitted by

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The global defender of human rights

1. Executive Summary

Amnesty International Australia submits that recognition of and support for basic human rights is integral to achieving corporate social responsibility (CSR). We believe the standards identified in international human rights law provide a useful point of reference in clarifying the responsibilities of company directors by defining what society can reasonably expect of them.

There is a need for great consistency in the definition and application of CSR. Amnesty International Australia believes the most effective way to ensure consistent standards for corporations in a global economy is to refer to the universal standards already negotiated by governments that form international human rights law.

We submit that companies which meet the human rights standards identified in this paper will in so doing go a long way towards delivering CSR and meeting the expectations that society has of business.

In answer to the specific questions posed in the terms of reference, we submit the following.

1. *Should the Corporations Act be revised to clarify the extent to which directors **may** take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?*

Yes. A subsection in or around s181 should clarify that considerations other than profit maximisation are legitimate under the existing directors' duty.

2. *Should the Corporations Act be revised to **require** directors to take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?*

Yes. A new duty to ensure the protection of human rights within a corporation's sphere of activity and influence should be inserted. There should be no reference to specific classes of stakeholders.

3. *Should Australian companies be encouraged to adopt socially and environmentally responsible business practices and if so, how?*

Yes. The adoption of a new directors' duty will go a long way towards that end. Voluntary initiatives and public reporting of social and environmental performance over and above legal requirements should be encouraged.

4. *Should the Corporations Act require certain types of companies to report on the social and environmental impact of their activities?*

Yes. Compliance with the duty to ensure the protection of human rights should be covered in corporations' annual reports. Beyond such compliance reporting, triple bottom line reporting should be encouraged but not necessarily mandated for all companies.

Amnesty International Australia's Recommendations to CAMAC

1. New directors' duty

Amnesty International urges the government to reform corporations law to make the protection of human rights central to business decision making. We believe that the most effective way of doing so would be to insert a new directors' duty into the Corporations Act along the following lines:

"A director or other officer of a corporation must ensure that human rights are protected within the corporation's sphere of activity and influence."

The content of the duty should be ascertained by reference to the UN Norms.

2. Reporting obligation

A certification by directors that all relevant human rights issues have been considered and complied with should be required as part of companies' annual reports. A disclosure of any particular human rights risk factors associated with a company's operations should also be required.

3. Enforcement of the duty

Individuals who allege to have suffered human rights violations in the course of a company's operations should be able to initiate proceedings for breach of the directors' duty, either directly or through a designated authority such as ASIC. Confirmed breaches of the duty should give rise to criminal or civil penalties, depending on the nature of the breach, in line with existing penalties in the Corporations Act.

4. Voluntary reporting

Voluntary public reporting on socially responsible business practices should be encouraged and should incorporate reference to established international human rights standards. It should be made clear that such reporting is separate from certification of compliance with a directors' duty to protect human rights and reporting of risk factors.

2. About 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.

While Amnesty International is concerned with human rights specifically, CSR as a term covers considerably wider subject matter, particularly environmental impact and performance. In practice, measures aimed at environmental protection often contribute to human rights. However, as an organisation focused on human rights, Amnesty International refrains from commenting on the environmental side of corporate regulation.

Part 1: Incorporating international human rights standards into corporate social responsibility

What's wrong with the current state of Corporate Social Responsibility?

In general terms, corporate social responsibility (CSR) as a concept compels business to look beyond the exclusive focus on profits and take into account, evaluate and take responsibility for the social and environmental impact of their operations. 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."¹

A recent global survey of business-people found that more than four out of five respondents agreed that the role of business in society is to generate high investor returns accompanied by contributions to the broader public good.² So the notion that companies should operate so as to support, or at least not damage, the broader public good is well accepted. Indeed, many companies are already delivering a commendable standard of corporate behaviour in terms of their effect on the lives of their employees, the environment and the local communities in which they operate. However, some companies are not, often due to the limited "reputation" exposure of their business.³ As a result,

¹ See <http://www.bsr.org/>

² McKinsey Quarterly, *The McKinsey Global Survey of Business Executives: Business and Society*, Jan 2006, http://www.mckinseyquarterly.com/article_page.aspx?ar=1741&L2=21&L3=114 .

³ For a summary of the varying levels of "human rights risk" associated with different types of businesses, see Amnesty International's submission to the Joint Committee on Corporations and Financial Services inquiry into corporate responsibility, entitled *Are Human Rights Everyone's Business?*, September 2005, pp 6-10.

human rights violations continue to take place in a context where powerful, well-resourced companies have the ability to do more to prevent them (see Case Study).

At the same time, most previous initiatives to codify and standardise the CSR responsibilities of companies have had limited success. One such example is the OECD's Guidelines for Multinational Enterprises. These are non-binding guidelines which companies are asked to respect wherever they operate. Since they include only a limited and general human rights provision, they offer little guidance on how to resolve human rights issues.

Such guidelines have been valuable in raising awareness of key issues among companies. To date, however, they have failed to allay public mistrust, to ensure accountability for human rights in corporate activities, and most importantly to reduce significantly the negative impact of some companies' activities on human rights. While we continue to support voluntary mechanisms such as the OECD Guidelines and the Voluntary Principles for Security and Human Rights in the extractives sector, we believe that appropriate, limited level of codification of CSR standards within the Corporations Act is desirable for Australian companies and for the broader community.

From the perspective of business, compliance with standards that are undefined, or have competing definitions and benchmarks, naturally causes significant problems. Furthermore, for those companies that truly are implementing best practice in terms of social responsibility, the absence of a solid and internationally consistent framework denies them the level playing field to use their good conduct as a legitimate competitive advantage in the marketplace.

At the practical level, although CSR is a widely used term there is a lack of consensus on what this specifically means. While there may be some advantages in allowing businesses to tailor their response to CSR to suit their individual circumstances, there are clear disadvantages. Businesses require certainty in the regulatory and legal climate. At the same time, the broader Australian community is seeking greater transparency of corporate operations, and in at least some specific cases, improved corporate behaviour. Codification of CSR in the Corporations Law, accompanied by an appropriate reporting regime, will address the concerns on both sides.

Case study: Royal Dutch Shell and Chevron Corporation in Nigeria

Ten years after the executions of writer and human rights campaigner Ken Saro-Wiwa and eight Ogoni companions in Nigeria, the peoples of the oil-producing Niger Delta continue to face death and devastation at the hands of Nigerian security forces. In 2005, Amnesty International urged oil multinationals Shell and Chevron to investigate their local subsidiaries' involvement in and responsibility for continued human rights abuses by security forces, and to ensure they respect the human rights of the communities where they operate.

Meanwhile, oil spills blacken the land and pollute the waterways, and gas flares take place close to farms and homes. Operational practices such as these would not be tolerated in the countries where major oil companies have their headquarters.

The Niger Delta's marginalised peoples have no effective recourse against human rights abuses, and remain among the most deprived oil communities in the world. Seventy per cent live on less than US\$1 a day.

While Amnesty International calls on the Nigerian government to end the impunity enjoyed by the security forces for human rights violations past and present, we also ask multinational oil corporations to operate within the framework of international human rights standards for companies.

Both Shell and Chevron have taken on board the Voluntary Principles for Security and Human Rights for companies in the extractive sector. These principles guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights. They apply wherever the company operates but have no monitoring mechanism, making it difficult to evaluate companies' adherence.

Continuing human rights abuses in Nigeria make it clear that a transparent reporting and monitoring regime is needed to deliver on the promise of CSR.⁴

International law and Australia's international human rights obligations are the foundation of CSR

The most effective way to ensure consistent standards for corporations in a global economy is to refer to the universal standards already negotiated by governments that form international human rights law.

Under international law, all states have an obligation to respect, protect and promote human rights within their jurisdiction through, among other things, appropriate legislation and regulation. For example, the International Covenant on Civil and Political Rights, to which Australia is a party, requires states to "adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant".⁵ Similar obligations are contained in the International Covenant on Economic, Social and Cultural Rights⁶ and other international human rights instruments to which Australia is a party.

Australia therefore has an obligation under international law to legislate to ensure that everyone within its jurisdiction, including natural persons, corporations and other entities, respect human rights. For such measures to offer meaningful protection, they must also be backed by enforcement mechanisms to deter human rights violations, punish perpetrators and provide remedies to victims.

Given that corporations are regulated at the domestic level, Australia's undertaking to ensure the protection of human rights in all aspects of life requires domestic legislation addressing corporations to include measures incorporating international human rights standards.

Overseas operations

Legislation to enforce human rights standards on Australian corporations should extend to all their operations, rather than being limited to operations within Australia. Human rights duties on Australian corporations should cover the foreign operations of companies incorporated in Australia, as well as the operations of overseas subsidiaries that are controlled by Australian entities.

The justification for the international reach of such legislation is twofold. First, given that human rights derive not from the gift of the state but by virtue of being human, nationality or geographic location is no justification for affording a lesser level of protection to some people affected by Australian

⁴ Source: "Claiming Rights and Resources - Injustice, Oil and Violence in Nigeria", Amnesty International, November 2005. <http://web.amnesty.org/library/index/engaf440202005>

⁵ International Covenant on Civil and Political Rights, 1966, Article 2(2).

⁶ International Covenant on Economic, Social and Cultural Rights, 1966, Article 2(1).

enterprises than others. Australia has pledged to the international community to do everything within its power to ensure the realisation of human rights. It should therefore legislate to the full extent of its sovereignty over Australian-based and Australian-controlled commercial operations.

The second justification is more commercial and pragmatic. If Australian enterprises are held to account for the effect of their operations on human rights within Australia, but not in other countries, some may be encouraged to move their more controversial operations offshore. Extending legislation protecting human rights to the foreign operations and foreign subsidiaries of Australian enterprises would remove that avenue as a method of avoiding scrutiny and accountability.

Extraterritorial laws protecting non-Australian victims from harm inflicted by Australians outside of Australian territory is nothing new. The child sex tourism provisions inserted into the Commonwealth Crimes Act in 1994 are a prime example of Australian law punishing harmful behaviour overseas by individuals and corporations with a nexus to Australia.⁷

The content of the human rights standards

The international community already expects corporations, along with every other kind of entity in society, to respect human rights. To guarantee universal human rights to every person, every type of entity – government, individual or corporation – needs to observe human rights. That intention is clear in the Universal Declaration of Human Rights, which calls on “every organ of society” to respect, promote and secure the rights that are set out in that Declaration, setting the context for the various human rights conventions that followed it.

Since corporations are predominantly regulated at the domestic level, international human rights law has historically addressed states in framing the rights that must be observed, leaving states to implement protection of those rights, including in the corporate context, in their own domestic legal systems. As the global operation of corporations has become more pervasive, efforts have been made to reframe those legal obligations in a manner that addresses corporations directly. The United Nations Sub-Commission on the Promotion and Protection of Human Rights has formulated the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises⁸ [‘UN Norms’] to achieve that objective.

The UN Norms succinctly set out the existing international human rights obligations that are relevant to the operations of corporations. The primary responsibility for the realisation of human rights under the UN Norms remains with the state, but at the same time, corporations have a concurrent duty to respect, protect and promote human rights “within their respective spheres of activity and influence”.⁹ The UN Norms go on to elaborate human rights duties in such areas as non-discrimination, involvement in war crimes and crimes against humanity, the use of security forces, labour rights and economic, social and cultural rights, as well as issues such as corruption and the environment.

The full text of the UN Norms, including the official commentary, is contained in Amnesty International’s document, *The UN Human Rights Norms for Business: Towards Legal Accountability*, which is annexed as an appendix to this submission. The appendix also contains a more detailed

⁷ Part IIIA of the Crimes Act 1914 (Cth) contains the child sex tourism provisions. Section 50AD extends the prohibition on proscribed acts overseas to Australian citizens, Australian residents, corporations incorporated in Australia and corporations that are incorporated overseas but carry on their activities principally in Australia. Similar coverage for Australian legislation protecting human rights in the course of commercial activity would be appropriate in Amnesty’s submission.

⁸ United Nations Sub-Commission on the Promotion and Protection of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises*, UN document no E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁹ UN Norms, paragraph 1.

explanation of the UN Norms from Amnesty International's perspective and sets out our position on the Norms.

The text of the UN Norms allows for alternative enforcement mechanisms to evolve. Governments are urged to "establish and reinforce the necessary legal and administrative framework" for the protection of the rights set out in the Norms,¹⁰ including by "using them as a model for legislative or administrative provisions".¹¹

Amnesty International Australia submits that the UN Norms form the logical reference point for the regulation of corporate behaviour under Australian legislation. Their basis in international law offers the government, the community and corporations themselves a level of consistency and legitimacy not matched by any other CSR model. The limitation of a corporation's obligations to its "sphere of activity and influence" means that corporations are required to carry out their everyday operations in a manner that respects and protects the human rights of those who are touched by their operations.

By incorporating the UN Norms in the scheme of corporate regulation, Australia will meet part of its international obligations to implement the protection of human rights in all aspects of life, including in the course of business. The remainder of this submission addresses the possible mechanisms for implementing the human rights standards set out in the UN Norms, within the scope of the questions posed by the terms of reference to this inquiry.

Part 2: Directors' duties and the protection of human rights

Reform directors' duties to include human rights standards

As noted in Part 1, obligations to respect and protect human rights already exist in international law, and the Australian Government has a duty to implement effective human rights protection in the Australian legal system. In our view, the most effective way of ensuring legal protection of human rights in the course of commercial activity is to oblige those who drive the company and are ultimately accountable for its performance – the directors – to prevent human rights violations in the course of their business.

Various existing Australian laws prohibit many of the activities that would be protected against by a unified duty to protect human rights. Labour law, occupational health and safety regulations, criminal law and other areas all place responsibilities on companies and their directors in terms of their daily operations and the effect they may have on local communities. However, what has emerged over time in these various forms represents a piecemeal approach, lacking consistency, clarity and directness. These failings have led businesspeople such as the Chairwoman of James Hardie Ltd, Ms Meredith Hellicar, to call for the CSR obligations of Australian companies to be clarified. Ms Hellicar in March 2005 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'. The simplest and best way to achieve this is by explicitly including human rights protection as a duty of directors in the Corporations Law. It is worth noting, however, that codification of human rights standards would change little in practice for companies whose activities do not present any risk of human rights violations.

¹⁰ UN Norms, paragraph 17.

¹¹ United Nations Sub-Commission on the Promotion and Protection of Human Rights, *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises*, UN document no E/CN.4/Sub.2/2003/38/Rev.2 (2003) [Commentary on UN Norms], paragraph 17(a).

A directors' duty to ensure human rights would place such concerns as a central issue in business decisions, rather than yet another peripheral compliance issue. Amnesty International Australia believes that incorporating human rights into directors' duties would be the most effective way to encourage companies to adopt socially responsible business practices.

Everyone is a stakeholder in human rights

In relation to the issue of human rights, Amnesty International finds the focus on stakeholders unhelpful. Every human being holds inalienable human rights by virtue simply of being human, and those rights should be respected by everyone, individual, corporation and government alike, regardless of the stake they may hold.

Instead, Amnesty International believes a focus on a duty to protect all the rights of all the people that are relevant in any given circumstance is most appropriate to consider a corporation's responsibilities. We recognise that boundaries of the necessary obligations will change constantly from one situation to another. For these reasons, we prefer to formulate a duty owed to whomever might be affected, without reference to stakeholders. To prevent such a duty from being unreasonably onerous, we propose a link to the actual scope of the corporation's operations through the concept of the "sphere of activity and influence", outlined below.

Clarification of the existing duty to act in the interests of the company as a whole

The primary duty of directors at common law is to act in the best interests of the company as a whole. That duty is also reflected in the duty in s 181(1) of the Corporations Act, which provides:

"A director or other officer of a corporation must exercise their powers and discharge their duties:
(a) in good faith and in the best interests of the corporation; and
(b) for a proper purpose."

These duties are in addition to numerous other obligations of directors in the Corporations Act and in other legislation, as well as at common law.

The reference to acting in the best interests of the company has generally been interpreted to mean the collective financial interests of the shareholders.¹² The assumption that generally follows that interpretation is that directors are obliged to pursue a course that maximises profit in order to discharge their duty. However, an obligation of profit maximisation has been described as "a common misconception of Anglo-American company law".¹³

It is important to emphasise that non-monetary considerations can serve the interests of the company. Operating in a clean environment, with employees receiving good pay and conditions, and supporting the local community can all serve the best long-term interests of the company, even if a portion of the company's financial resources need to be dedicated towards those goals rather than shareholder dividends.

¹² The CAMAC discussion paper at p 49 provides more background to this issue, including judicial authority.

¹³ Janet Dine, *Companies, International Trade and Human Rights*, 2005, Cambridge, Cambridge University Press, p 45. Dine contends that the duty to act in the interests of the company "does not necessarily equate shareholders with the company nor does it equate shareholder interests with 'profit maximisation' and impose a duty on directors to achieve such a goal."

While the case law considered in the CAMAC discussion paper indicates that courts will tend to give directors broad scope to determine that such social and environmental endeavours are in the best interests of the company, a clarification in the Corporations Act would benefit the overwhelming majority of business decisions that will never reach the courts. If the opportunity to clarify a common misconception about the content of directors' duties is taken, many businesses may voluntarily devote more of their resources and efforts towards positive social and environmental practices.

Proposed formulation of duty to respect and protect human rights

Amnesty International Australia proposes a new directors' duty to be inserted into the Corporations Act along the following lines:

"A director or other officer of a corporation must ensure that human rights are protected within the corporation's sphere of activity and influence."

Such a formulation draws upon existing international human rights law for the appropriate standards. Of course, directors cannot be expected to determine for themselves what "protection of human rights" entails in their company's operations. Indeed, there is evidence to suggest a significant gap exists between business people and human rights specialists in the interpretation of human rights protection in a business context.¹⁴

The precise human rights to be protected would need to be set out in clear form in a schedule to the Corporations Act. The elaboration of the rights to be protected would best be served by adapting the UN Norms in a form appropriate for Australian legislation. That document has already undertaken the task of extracting the obligations and practices from international human rights law that are relevant for corporations. More information on Amnesty's position on the UN Norms and the text of the Norms themselves is contained in the appendix to this submission.

The concept of the "sphere of activity and influence" is also drawn from the UN Norms. The intention behind that definition of the scope of a corporation's obligations is to ensure that corporations are not required to go beyond the scope of their own everyday business operations to protect human rights, they are merely expected to carry out their usual business operations in a way that respects human rights.

The concept of "sphere of influence", in relation to complicity with human rights violations, is evolving from company practices, national jurisprudence and the work of international organizations, NGOs and academics. A Special Representative of the UN Secretary-General is currently charged with refining the definition of the "sphere of activity and influence", among other tasks to clarify the practical application of the UN Norms, pursuant to a resolution of the UN Commission on Human Rights on 15 April 2005: E/CN.4/2005/L.87.

The concept is somewhat analogous to the text of what is "reasonable" in a legal sense, taking into account all relevant considerations; the "sphere of activity and influence" of a company depends on its specific circumstances and specific situation. Any attempt to definite it too broadly or narrowly may either imply unreasonable obligations on some or allow others to escape reasonable accountability.

¹⁴ See generally Adam McBeth and Sarah Joseph, 'Same Words, Different Language: Corporate Perceptions of Human Rights Responsibilities', (2006) 11 *Australian Journal of Human Rights* 95-110, reporting on a study by the Castan Centre for Human Rights Law.

For example, the United Kingdom Corporate Responsibility Bill 2003 included the concept of 'reasonable steps'. This bill provides that a director 'shall, when considering any matter or taking any decisions, act in the way which in his opinion would be most likely to promote the success of the company', thus restating an existing and well-understood principle of company law, but qualifies that position by continuing:

but in so doing, it shall be the duty of the directors of any company—

(a) to consider—

- (i) the environmental, social and economic impacts of their operations and any proposed operations; and
- (ii) the interests of all their stakeholders when making any decision in respect of those operations or proposed operations;

(b) to take all reasonable steps to minimise any negative environmental, social and economic impacts of any such operations or proposed operations . . .

The concept of 'sphere of influence' is understood by the more than 1,100 companies who have signed the UN Global Compact, which asks companies to "embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption"

At the same time, the "sphere" concept extends beyond the corporate veil that shields separate companies in other circumstances, even when they are engaged in the same enterprise. The sphere of activity and influence¹⁵ would extend to the activities of a supplier, for example, if the corporation exercises control over those activities. If the relationship is independent, the corporation will not be held responsible for the other entity's actions.

Each situation will be different, and this definition of the scope of a corporation's obligations ensures that operational reality rather than legal form is the defining feature.

Enforcement

In order to give meaningful effect to a duty to protect human rights, people who allege that their rights have been violated must be able to initiate proceedings against the relevant directors for breaching the duty. Such a mechanism would be consistent with shareholders' ability to allege breaches of other directors' duties.

An alternative enforcement mechanism which provides a filtering stage for prospective claims could be to direct allegations of human rights violations to a dedicated officer at ASIC, who could then investigate the basis of the complaint and initiate proceedings against the director if the circumstances so warrant.

An intermediate step could also be established for less serious breaches, perhaps involving mediation or discussions between the directors and the alleged victims with a view to improving the protection of human rights in a non-punitive fashion. A model for such a consultative process could be the existing mechanism under the OECD Guidelines for Multinational Enterprises, in which complaints go to the

¹⁵ A Special Representative of the UN Secretary-General is currently charged with refining the definition of the "sphere of activity and influence", among other tasks to clarify the practical application of the UN Norms, pursuant to a resolution of the UN Commission on Human Rights on 15 April 2005: E/CN.4/2005/L.87.

government's designated National Contact Point in each country and a response is sought from the corporation involved, followed by mediation if appropriate.¹⁶

Confirmed breaches of the duty should give rise to criminal or civil penalties, depending on the nature of the breach, in line with existing penalties in the Corporations Act.

Environmental duties

Specific instances of environmental harm that relate to identifiable human rights violations can be covered by the proposed human rights duties for directors. An example would be the poisoning of a river that people use for drinking water.

This submission has not otherwise considered whether corporations or their directors ought to have environmental duties, given Amnesty's mandate to protect and promote human rights.

Part 3: Reporting

A suitable reporting regime is essential to the success of any effort to codify CSR standards and increase the transparency of corporate behaviour. Codifying human rights standards within corporate law, and creating a genuine reporting and enforcement regime, will avoid many of the pitfalls of other attempts to promote CSR, such as the OECD Guidelines. These efforts have often lacked transparency because companies can endorse the Guidelines without being required to report on their progress in delivering on them.

Corporate reporting on social and environmental performance is gradually becoming mandatory in some countries. For example, France has required triple bottom line reporting for companies listed on the premier marche since 2002, while in South Africa, listing rules for the Johannesburg stock exchange require reporting against the indicators in the Global Reporting Initiative. Australia also requires a form of such reporting from fund managers, who are obliged under the Financial Services Reform Act 2001 to "state the extent to which labour standards, or environmental, social or ethical considerations are taken into account in the selection, retention, or realisation of the investment."

While CSR reporting should be considered a mandatory component of any change to the Corporations Law, this should be incorporated as much as possible into existing reporting arrangements so as to minimise bureaucratic overhead on businesses, Amnesty International Australia believes adequate reporting can comprise two simple parts.

Firstly, directors should as part of regular annual reporting issue a statement of compliance with the proposed change to directors' duties referred to on Page 8.

¹⁶ More information about the dispute process, known as "specific instance" complaints, is available at the website of the Australian National Contact Point: www.ausncp.gov.au.

Example statement of compliance with Human rights legislation

“The directors of XYZ are satisfied that for the financial year YYYY, all relevant human rights issues have been considered and complied with within its sphere of activities and influence. The directors are also satisfied that the disclosure of risk factors below is an accurate and complete list of risk factors in the companies operations as at DD/MM/YYYY”

Such a statement would place an obligation on the company to ensure that this statement is verifiable, including information regarding any factors taken into consideration or not taken into consideration in forming this view.

Secondly, companies should as part of regular annual reporting publish a statement on the level and nature of human rights risks which they face through their corporate activities and sphere of influence. This should use a standardised list of industry types (such as that utilised by the Australian Bureau of Statistics) and geographic areas of operation. As a result of these reports, an estimation of the factors that correlate with actual human rights violations would emerge over time.

The requirement to disclose human rights risk factors and report on the implementation of human rights standards would be analogous to the existing requirement to report on environmental performance under section 299(1)(f) of the Corporations Act.

Example Disclosure of Risk Factors

"XYZ and its contractors are at present involved in extractive industries in the Democratic Republic of the Congo, and as such is rated as a moderate to high risk of potential human rights violations."

Both these statements must be subject to an external audit verification, with remedies for misstatement or non compliance.

Example of Audit Opinion

“Having completed an audit of the human rights impact of XYZ, I am satisfied that the above statements are true and complete.”

Or

“Having completed an audit of the Human rights impact of XYZ, we are unable to certify that the above statements are true and complete.”

A failure to submit either of the two forms of reporting would initiate action by ASIC under the Corporations Law, whilst audit opinions could be covered under existing audit legislation.

Part 4: Promotion of good corporate citizenship

Amnesty International Australia has argued for changes to the Corporations Law to deliver on the promise of CSR. However, we have also stated our continuing support for voluntary mechanisms and efforts by the business community to self-regulate to deliver to community expectations. 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. We believe there is opportunity for the Australian Government to extend the Community Business Partnership into a wider campaign aiming to improve standards of corporate behaviour. A promotional effort to increase understanding of CSR in the business community is required. One existing initiative along these lines is the creation of "*A Guide for Integrating Human Rights into Business Management*", prepared by the Business Leaders Initiative on Human Rights in Europe. This is currently at the consultation draft stage, and is proposed to be promoted in Europe with support from government when completed.

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.