australian network of environmental defender's offices

Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Corporate Social Responsibility

28th September 2005

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

Contact Us

EDO ACT (tel. 02 6247 9420)
edoact@edo.org.au

EDO NSW (tel. 02 9262 6989)
edonsw@edo.org.au

EDO NQ (tel. 07 4031 4766)
edonq@edo.org.au

EDO NT (tel. 08 8982 1182)
edont@edo.org.au

EDO QLD (tel. 07 3210 0275)
edoqld@edo.org.au

EDO SA (tel. 08 8410 3833)
edosa@edo.org.au

EDO TAS (tel. 03 6223 2770)
edotas@trump.net.au

EDOVIC (tel. 03 9328 4811)
edovic@edo.org.au

EDO WA (tel. 08 9221 3030)
edowa@edo.org.au

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

28 September 2005

To Whom It May Concern,

Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Corporate Social Responsibility

The Australian Network of Environmental Defender's Offices ("ANEDO") welcomes the opportunity to make a submission to the Inquiry into Corporate Social Responsibility ("the Inquiry") by the Parliamentary Joint Committee on Corporations and Financial Services.

In summary, ANEDO is of the view that legislative amendments are necessary to ensure that Australian companies give adequate consideration to the environment and other non-shareholder interests in decision-making processes. We make the following recommendations:

- **Recommendation 1**: that a series of institutional mechanisms be introduced to mandate and encourage organisational decision-makers to consider the interests of stakeholders other than shareholders, the broader community, and the environment. Such mechanisms must mandate long-term commitment to the consideration of broader interests, rather than facilitating such consideration only when financial viable for an entity to do so.
- **Recommendation 2:** that initiatives be developed that promote integration of economic aims, environmental goals and community interests in corporate decision-making processes. In particular, ANEDO recommends that the *UN Norms*, which incorporate the principle of sustainable development, form the basis for development of legislation and guidelines relating to corporate activity. These initiatives should be supported by the development of tax incentives for the set-up costs associated with integrating CSR programs.
- **Recommendation 3**: that section 181(1) of the *Corporations Act 2001 (Cth)* be amended in such a way as to make clear that the best interests of the company include the long-term interests of the company. The legislation should require organisational decision-makers to consider the impacts that the company may have upon the community and on the environment and make decisions which are in the best interests of the company as a member of the community.
- **Recommendation 4**: that the *Corporations Act* be revised to clarify that the interests of shareholders can be broadly defined, encompassing both a

consideration of community interests (of which shareholders are a part) and a long-term perspective. This, combined with consistent amendments to other relevant legislation (such as relating to occupational health and safety, anti-discrimination and environmental regulation), should assist in creating a more comprehensive framework for corporate social responsibility.

- **Recommendation 5:** that voluntary measures should not be considered as an alternative to binding legislation requiring companies to act consistently with principles of sustainable development and social responsibility, but should form part of a range of mechanisms to promote corporate social responsibility.
- **Recommendation 6**: that the *Corporations Act* be amended to require companies to report on their performance in environmental, social and financial terms. The basis for consideration of operational compliance with environmental and social standards should be based on national laws and basic international standards (as set out, for example, in the *UN Norms*).
- **Recommendation 7:** that initiatives in other jurisdictions requiring companies to consider the interests of the environment and social concerns as part of the long term interests of the company, be actively considered for application in Australia, subject to broad community consultation.

Our comments in relation to the Inquiry Terms of Reference are set out below.

a. The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community.

The extent to which organisational decision-makers have had regard for the interests of stakeholders other than shareholders has been largely determined by good-will rather than any mandatory requirements. In Australia, such good will has been relatively lacking. While there have been some corporate initiatives for promotion of environmental and social concerns by companies and industries in Australia,[1] organisational decision-makers have often had little regard for non-shareholder interests.

Since at least the 1970s, there has been growing public awareness of the need for corporations to take into account the interests of stakeholders other than shareholders. In relation to the environment, much of the focus on corporate responsibility has taken place in the context of "sustainable development". In more recent years, the public's preoccupation with globalisation, the push for free trade and the role of large corporations has led to calls for greater corporate accountability and transparency. This has been a catalyst for the development of a number of initiatives both at the international and national level aimed at encouraging corporate environmental and social responsibility. Most significant amongst these initiatives has been the development of corporate codes of conduct. Various types of voluntary codes of conduct have emerged and include intergovernmental codes,[2] multi-stakeholder codes,[3] model codes,[4] trade

---

[1] For example, the Minerals Council of Australia's Framework for Sustainable Development, which promotes the principle that minerals companies need to integrate sustainable development considerations within the corporate decision-making process: Minerals Council of Australia, *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development*, 2004, Principle 2, available at www.minerals.org.au.

[2] Such as the *OECD Guidelines for Multinational Enterprises Revised 2002* DAFFE/IME/WPG(2000)15/FINAL at http://www.oecd-org; the*Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy Third Edition (2001)* (ILO), adopted by the Governing

association codes,[5] and company codes.[6] Many corporations, including some Australian companies,[7] have adopted the principles espoused by such codes.

While awareness of corporate responsibility has increased, Australian companies have tended to lag behind in terms of adopting and implementing corporate responsibility measures.[8] The lack of attention by Australian corporations to non-shareholder interests has resulted in some companies being implicated in allegations of gross environmental and human rights abuses.[9] Two recent cases (the James Hardie restructure and the Anvil mines issue)[10] have illustrated the approach of certain Australian companies to corporate responsibility principles. Australian companies have failed to grasp the opportunity to significantly advance consideration of environmental and social concerns in decision-making processes.

Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th Session (Geneva, November 2000); and the United Nations Global Compact: details available at http://www.unglobalcompact.org/.

3 Developed in conjunction with business and community representatives. See, for example, the Global Reporting Initiative: details available at http://www.globalreporting.org/index.htm.

4 These are usually developed by non-governmental organisations. These include Amnesty International's *Just Business* (available at www.amnesty.org.au), the Global Sullivan Principles and Social Accountability International's SA 8000.

5 Such as the Minerals Council of Australia's *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development*, 2004, available at www.minerals.org.au; and the Canadian Chemical Producers Association Codes of Practice, copy available at www1.umn.edu.

6 For example, Shell's *Revised Statement of General Business Principles*, copy available at www1.umn.edu. A summary of the different codes is included in the Organisation for Economic Co-operation and Development, 'The OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison' in *OECD Guidelines for Multinational Enterprises: Global Instruments for Corporate Responsibility - Annual Report 2001* (2001) 57.

7 For example, signatories to the Minerals Council of Australia framework include Bendigo Mining Limited, BHP Billiton Limited, International Power Hazelwood, Newmont Australia Limited, Placer Dome Asia Pacific Ltd, and Rio Tinto Limited.

8 For example, only 1.5 percent of the top Australian ASX listed companies take part in the Australian Corporate Responsibility Index, a voluntary tool which measures the company performance against a variety of environmental and social criteria: See Corporate Responsibility Index <http://www.corporate-responsibility.com.au/default.asp> at 20 August 2005. By comparison, approximately 29 percent of British companies take part in the British Corporate Responsibility Index: Business in the Community, *Executive Summary: Measuring, Managing and Reporting Responsible Business Practice* (2004) 5. <http://www.bitc.org.uk/programmes/programme_directory/business_in_the_environment/bie_index/index.html> at 20 August 2005.

9 See, for example, *Dagi and Ors v BHP Minerals Pty Ltd and Ok Tedi Mining Ltd* [1997] 1 VR 428, regarding tortious claims stemming from massive environmental degradation at the Ok Tedi mine in Papua New Guinea; *Sarei v Rio Tinto,* 2002 221 FSupp 2d 1116 (CD Cal 2002) where the Australian company Rio Tinto Limited was accused of involvement in the St Valentine's Day massacre in Bougainville.

10 Anvil Mining company allegedly helped Government troops quell an uprising in the Democratic Republic of Congo. A United Nations investigation estimates that more than 100 villagers were massacred by soldiers who launched their attack with vehicles owned by Anvil Mining: Daniel Hoare, "AFP investigates Anvil Mining over human rights abuses", AM Radio, 19 August 2005, transcript available at www.abc.net.au. James Hardie's corporate restructure effectively cut off compensation for asbestos victims, but was regarded as consistent with directors' duties: D F Jackson QC, *Report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation*, (21 September 2004) 15.

It would appear that Australian companies require greater incentives than mere good-will to ensure that environmental and social considerations are prioritised in decision-making processes. Based on both the historical record and the need to ensure that there are no "free riders", legislative measures need to be a pivotal aspect of an effective regulatory framework. This notwithstanding, there are also other mechanisms for promoting corporate responsibility. For example, the awarding of governmental contracts to companies should be influenced by the extent to which companies act consistently with and promote environmental and corporate responsibility initiatives. Such incentives would encourage companies to exceed basic legislative standards for the betterment of the environment and the community.

Therefore, institutional mechanisms must mandate that an entity must not take action detrimental to the long term financial interests of the company. This would include consideration of the long term environmental impacts of a decision. This requirement should be clear and strictly applied.

Recommendation 1: that a series of institutional mechanisms be introduced to mandate and encourage organisational decision makers to consider the interests of stakeholders other than shareholders, the broader community and the environment. These mechanisms must mandate long-term commitment to the consideration of broader interests, rather than facilitating such consideration only when financial viable for an entity to do so.

b. The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.

ANEDO is of the view that corporations should integrate environmental and social issues with economic considerations in decision-making processes. This has been a well-established principle of ecologically sustainable development ("ESD") dating back to the 1970s. Companies ought to have regard to the broader interests of the community and other stakeholders to the extent that such interests are within their sphere of influence. Such an approach would be consistent with international developments regarding corporate responsibility (in particular the UN *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*)[11] and the internationally recognised definition of sustainable development.[12] It would also be in line with domestic standards such as the principal Commonwealth Government response to sustainable development, the 1992 *National Strategy for Ecologically Sustainable Development*. The strategy defined key principles of sustainability, which included "integrating economic and environmental goals in policies and activities" and "ensuring that environmental assets are properly valued". The integration of economic and environmental goals and the incorporation of community interests in policies and

---

[11] Commission on Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003). See *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc E/CN.4/Sub.2/2003/38/Rev.2 (2003).

[12] Sustainable development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs': *Our Common Future:* Report of the World Commission on Environment and Development (The Brundtland Report), 1987.

activities must occur at both the governmental and non-governmental level as a matter of priority.

It has been our observation that in financially difficult times, CSR programs are often the first initiatives to be abandoned by an entity. Corporations and tax law should be amended to encourage companies to remain committed to CSR programs and continue to report on them, rather than sacrifice such programs in hard times. The Canadian Institute of Chartered Accountants has undertaken research into the links between environmental performance and the creation of significant shareholder value over time.[13] Their preliminary survey work on measuring and monitoring environmental performance, and how this links with increased shareholder value, provides a model which should be used to survey Australian companies. Collection of such data would assist in developing an appropriate regulatory requirement for long term commitment.

Recommendation 2: that initiatives be developed that promote integration of economic aims, environmental goals and community interests in corporate decision-making processes. In particular, ANEDO recommends that the *UN Norms*, which incorporate the principle of sustainable development, form the basis for development of legislation and guidelines relating to corporate activity. These initiatives should be supported by the development of tax incentives for the set-up costs associated with integrating CSR programs.

c. The extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community.

While there are strong grounds for arguing that the current legal framework does not prevent consideration of other interests consistent with corporate responsibility principles, it certainly does not encourage such consideration.

Section 181(1) of the *Corporations Act* provides that directors have a duty to act:

(a) in good faith in the best interests of the corporation; and

(b) for a proper purpose.

'The best interests of the corporation' has traditionally been taken to mean the financial interests of the company's shareholders as a whole.[14] While the interests of the company may include interests that are reasonably incidental to, and within the reasonable scope of carrying on, the business of the corporation (such as employees[15] and creditors[16]),

---

[13] See "*Environmental Performance and Shareholder Value Creation – 1999 Survey*" MD&A Business reporting, Canadian Institute of Chartered Accountants, http://www.cica.ca/index.cfm/ci_id/10388/la_id/1.htm; and *"Environmental Performance: Measuring and Managing what Matters"* Willis A, and Desjardins J, http://www.cica.ca/index.cfm/ci_id/10390/la_id/1.htm.

[14] Harold Ford, R P Austin and Ian Ramsay, *Ford's Principles of Corporations Law* (12th ed, 2005) 341.

[15] See, eg, *Parke v Daily News* [1962] Ch 927 in the context of United Kingdom corporations law; and *Teck Corporation v Millar* (1973) 33 DLR (3d) 288 in the context of Canadian corporations law.

[16] *Walker v Wimborne* (1976) 137 CLR 1; *Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50; *Sycotex Pty Ltd v Baseler* (1993) 13 ACSR 766; *Linton v Telnet Pty Ltd* (1999) 30 ACSR 465, 473–4.

shareholder interests remain prominent.[17] Acting for a "proper purpose" requires consideration of the purpose for which the power to so act was conferred and whether the power was exercised largely for that purpose.[18] As a result, the duty of organisational decision-makers is often interpreted as meaning that they may take into account environmental and social concerns only to the extent that those concerns are in the financial interests of shareholders.

Despite the limited construction of the duties of organisational decision-makers as discussed above, consideration of corporate environmental and social responsibility principles may also benefit the financial interests of the shareholders. On occasions where short-term gains might be incompatible with non-shareholder concerns, a socially and environmentally responsible outlook requires the prioritisation of the longer-term interests of shareholders. This approach is not inconsistent with directors' duties as currently stated. The evidence suggests that companies that are more committed to environmental and social responsibility often outperform the market,[19] thereby positively influencing shareholder value. A reputation for corporate responsibility may also assist a company to broaden its market share; attracting "enlightened" investors who are keen to invest in companies that ensure their businesses are consistent with environmental and social concerns. Thus, the legal requirement that directors make decisions in the best interests of shareholders does not prevent consideration in and of itself, of the broader community and other stakeholders. Rather, for perhaps cultural reasons, this longer-term approach is one that Australian organisational decision-makers may often be reluctant to take.[20]

Recommendation 3: that section 181(1) of the *Corporations Act* be amended in such a way as to make clear that the best interests of the company include the long-term interests of the company. The legislation should require organisational decision makers to consider the impacts that the company may have upon the community and on the environment and make decisions which are in the bests interests of the company as a member of the community.

d. Whether revisions to the legal framework, particularly to the *Corporations Act*, are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community. In considering this matter, the Committee will also have regard to obligations that exist in laws other than the *Corporations Act*.

---

17 *Parke v Daily News* [1962] Ch 927.

18 *Kokotovich Constructions Pty Ltd v Wallington* (1995) 17 ACSR 478; *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821; *Hogg v Cramphorn Ltd* [1976] Ch 254. *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285.

19 See for example, Michael Anderson and Matthew Rey (AMP Capital Investors), 'Many Good Returns' in 'Special Report: Corporate Responsibility Index', *The Age* (Melbourne), 4 April 2005, 3; Hendrik Garz, Claudia Volk and Martin Gilles, *More Gain than Pain: Sustainability Pays Off* (2002) 16; J D Margolis and J P Walsh, *People and Profits: The Search between a Company's Social and Financial Performance* (2001).

20 For example, the James Hardie group considered that the financial interests of its shareholders required it to isolate and leave under-funded the subsidiary at risk of large compensation pay-outs. This action caused irreparable reputational damage to the group and in the long-term may ultimately weaken its ability to attract investors, win contracts and/or sustain a higher share price.

ANEDO's view is that the legal framework should be revised to clarify that the interests of shareholders can be broadly defined, encompassing both a consideration of community interests (of which shareholders are a part) and a long-term perspective. Australia has a patchwork of laws regarding occupational health and safety, anti-discrimination and the environment, but these laws do not constitute a comprehensive framework for corporate responsibility. The Commonwealth Government should revise the *Corporations Act* (consistent with the related occupational health and safety, anti-discrimination and environmental legislation) to include provisions requiring companies to have regard for non-shareholder stakeholders and the broader community and to act consistent with internationally recognised human rights and environmental standards.

As noted above in Recommendation 2, amendments to tax law regarding the set up costs of instigating CSR programs should be made. Specific tax treatment would assist in encouraging incorporated entities to consider broader interests. The legal framework must provide for adequate "sticks and carrots". Establishing a comprehensive CSR operation and reporting program must be compulsory by regulation, and achievement of CSR goals must be made desirable and profitable through incentives (or "carrots") such as special tax treatment.

Recommendation 4: that the *Corporations Act* be revised to clarify that the interests of shareholders can be broadly defined, encompassing both a consideration of community interests (of which shareholders are a part) and a long-term perspective. This, combined with consistent amendments to relevant other legislation (such as relating to OH&S, anti-discrimination and environmental regulation), should assist in creating a more comprehensive framework for corporate social responsibility.

e. Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors.

Voluntary measures are, in essence, premised on the self-interested role advocated by Milton Friedman, whereby the only 'social responsibility of business is to increase its profits'.[21] Notions of corporate social responsibility have developed substantially in the past 30 years to a more inclusive, mutually beneficial role for corporations at least in theory and often in practice. Voluntary codes have an important part to play – as a supplement to other measures – in promoting compliance with broader environmental and social responsibilities.[22] Nevertheless, voluntary codes are no substitute for mandatory and enforceable legislative requirements.

While corporate approval of voluntary codes of conduct may be considered a positive step toward corporate responsibility, there are at least three fundamental flaws with such codes. First, as these codes have no binding force, compliance tends to be subordinated

---

[21] Milton Friedman, *Capitalism and Freedom* (1962), 133, 133; see also Elaine Sternberg, 'Stakeholder Theory Exposed' (1996) 2 *Corporate Governance Quarterly* 4.

[22] Anne-Christine Habbard, 'The Integration of Human Rights in Corporate Principles' in *OECD Guidelines for Multinational Enterprises: Global Instruments for Corporate Responsibility - Annual Report 2001* (2001), 100.

to the short-term interests of the company, thereby having little real impact on corporate behaviour. Second, the driving forces behind the establishment of voluntary codes mean that they have been concentrated in large corporations in certain industries, leaving all others unregulated.[23] As such, there is currently no universality to corporate codes, which undermines the existence of a level playing field and the ability of such codes to drive corporate change on all levels. Third, there is significant concern regarding the failure to actually implement such codes and the reluctance of many companies to permit independent monitoring of implementation. Given the flaws inherently associated with voluntary initiatives, they cannot be considered a replacement for a mandatory regime requiring organisational decision makers to have regard for the interests of stakeholders other than shareholders.

Recommendation 5: that voluntary measures should not be considered as an alternative to binding legislation requiring companies to act consistently with principles of sustainable development and social responsibility, but should form part of a range of mechanisms to promote corporate social responsibility.

f. The appropriateness of reporting requirements associated with these issues.

At present, reporting requirements relate almost exclusively to the financial performance of companies while reporting of environmental or social performance takes place in limited circumstances. Incorporated entities are required to report annually on their financial dealings. Section 299(1)(f) of the *Corporations Act* requires the directors' report for a financial year to give details of the entity's performance in relation to environmental regulation if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory.[24] Listed companies must also immediately disclose all events that would have a material effect on the price or value of its securities.[25] This could extend to environmental or social matters that have a material effect on the price or value of securities. In addition, listed companies are required to provide a statement in their annual report disclosing the extent to which they have followed the ASX's *Principles of Good Corporate Governance and Best Practice Recommendations*.[26] Where companies have not followed all the recommendations, they must identify the recommendations that have not been followed and give reasons for not following them. The Best Practice Recommendations include

---

[23] Corporate codes of conduct incorporating human rights standards have tended to be concentrated in sectors such as mining, apparel, footwear, sporting goods, toys and retailing: OECD Working Party of the Trade Committee, *Codes of Conduct - An Expanded Review of Their Contents*, TD/TC/WP(99)56?FINAL, Paris (2000); Rhys Jenkins, *Self-Regulation in a Global Economy* (2001), 19. Similarly, environmental codes have been adopted by large forestry, mining and oil extraction companies that have been the subject of NGO scrutiny (such as Amnesty International's concentration on Shell's activities in Nigeria and BP's activities in Colombia: Amnesty International, *Human Rights: Is it Any of Your Business?* (2000) Amnesty International <www.amnesty.org.uk/business>). In contrast, sectors that service businesses or consumers in developing nations, have not generally adopted codes of conduct as they tend to be less affected by consumer activism: Jenkins, op cit, 14-15.

[24] It must be noted that in 2002, the Corporations Amendment Bill 2002, an Exposure Draft Bill proposed to amend the Corporations Act 2001 so as to repeal this section.

[25] *ASX Listing Rules* (2004) at <http://www.asx.com.au/supervision/rules/listing/index.htm> at 30 August 2005.

[26] *ASX Listing Rule* 4.10.

Principle 10, which recommends that companies should recognise the legitimate interests of stakeholders. The Recommendations do not contain a recommendation or principle that would cause the company to report on the extent to which its activities have impacted on the environment or the community. Indeed, apart from the specific requirements and recommendations referred to above, there is no general obligation for companies to report on their social, environmental or human rights-affecting activities.

It is arguable that community regulation has been a much more effective check on corporate social responsibility than reporting requirements. The community can use a range of measures and pressure points to make corporations accountable. These include applying sustainability indexes to companies, and instigating consumer boycotts etc. These measures however, are not a comprehensive substitute for mandatory triple bottom line reporting requirements.

Recommendation 6: Amend the *Corporations Act* to require companies to report on their performance in environmental, social and financial terms. The basis for consideration of operational compliance with environmental and social standards should be based on national laws and basic international standards (as set out, for example, in the *UN Norms*).

g. Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

Approaches in other jurisdictions may, or may not, provide a model, *in toto* or in part, for adoption in Australia. ANEDO is aware of two initiatives in other countries that should be considered as part of an Australian approach to corporate social responsibility.

In South Africa, for example, all publicly listed companies must report in accordance with the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines.[27] The Guidelines require performance assessment and disclosure of economic, environmental and social policies, activities and impacts.[28] ANEDO would support the incorporation of the GRI Guidelines into Australian reporting requirements.

Further, in the United Kingdom the *Company Law Reform Bill 2005* (UK) provides that directors' basic goal should be the success of the company for the benefit of shareholders, [29] but that directors must take account, 'where relevant and so far as reasonably practicable', of:

a. both the long and short term consequences of a decision; and

b. any need of the company to have regard to the interests of its employees, to foster business relationships with suppliers, customers and others; to consider the impact of

---

[27] David Kinley and Junko Tadaki, 'From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law' (2004) 44 *Virginia Journal of International Law* 931, 957.

[28] See Global Reporting Initiative, 'GRI Reporting Framework' <http://www.globalreporting.org/guidelines/framework.asp> at 30 June 2005.

[29] Department of Trade and Industry, *Company Law Reform*, (March 2005) <www.dti.gov.uk/cld/review.htm>, 20.

its operations upon the community and the environment and to maintain a reputation for high standards of business conduct.[30]

It should be noted that the language of the Bill is prescriptive not merely permissive, and in effect, it would amend directors' duties to enable an enlightened shareholder value approach to decision-making. The introduction of similar legislation in Australia should be actively considered as it would address several of the concerns raised in this submission regarding the inadequate manner in which organisational decision-makers currently take into account non-shareholder interests.

Recommendation 7: That initiatives in other jurisdictions which require companies to consider the interests of the environment and social concerns as part of the long term interests of the company, should be actively considered for application in Australia, subject to broad community consultation.

Should you have any queries, please do not hesitate to contact Jeff Smith, Director, NSW Environmental Defender's Office on 9262 6989.

Yours Sincerely,

Australian Network of Environmental Defenders' Offices

[signed]

Jeff Smith

On behalf of ANEDO

[30] *Company Law Reform Bill 2005* (UK), B3(3).