

Parliamentary Joint Committee on Corporations and Financial Services
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9 September 2005

Dear Secretary,

Oxfam Australia values the opportunity to contribute to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into corporate responsibility. Please find our submission attached.

The submission addresses certain aspects of the terms of reference, including:

- A) The extent to which organisational decision makers have an existing regard for CSR
- B) The extent to which organisational decision makers should have a regard for CSR
- E) Alternative mechanisms, including voluntary measures, that may enhance consideration of stakeholder interests by incorporated entities and/or their directors
- F) The appropriateness of reporting requirements associated with these issues.

Oxfam Australia would welcome the opportunity to meet with the committee to further discuss some of the CSR initiatives we are working upon. We look forward to hearing from you.

Yours faithfully,



Andrew Hewett
Executive Director



**Submission to the Parliamentary Joint Committee on
Corporations and Financial Services
Inquiry into Corporate Responsibility**

September 2005

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1. Oxfam Australia: Background

Oxfam Australia values the opportunity to contribute to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into corporate responsibility.

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For over 50 years, Oxfam Australia has been a vehicle to assist others to build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes long-term development projects, provides emergency response during disaster and conflict, and executes campaigning and advocacy for policy and practice changes which promote human rights and justice.

Oxfam Australia supports over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific, and Indigenous Australia. The agency is part of the Make Trade Fair campaign alliance and the Make Poverty History campaign. The work of Oxfam Australia was supported by more than 50,000 Australians in 2004.

Oxfam Australia takes a rights based approach to development, which reflects the belief that poverty and suffering are primarily caused and perpetuated by injustice between and within nations. Such injustice and suffering is neither natural nor inevitable. Instead, it results from the violation of the human rights of women, men and children by people or institutions that have greater access to power, and through systems based on injustice, inequality and discrimination.

Oxfam Australia believes that an independent monitoring mechanism is crucial to the effectiveness and validity of corporate responsibility, even if reporting is made mandatory. The agency's experience with the Mining Ombudsman Project demonstrates the value and usefulness of such a monitoring/complaints mechanism.

Over the past five years, Oxfam Australia's Mining Ombudsman Project has investigated community complaints against the actions of Australian Mining companies operating throughout Asia, Central America and the Pacific. It is further explained in Section 6A.

2. Defining Corporate Responsibility

Over the past decade, numerous NGOs, including Oxfam Australia and Amnesty International, and multilateral institutions, such as the United Nations and the OECD, have promoted the tenets of corporate responsibility. There is ongoing debate as to how 'corporate responsibility' should be defined; what aspects it should encompass

and what level of regulation should be imposed. Oxfam Australia believes corporate responsibility should comprise the economic, social and environmental impacts of company operations. This includes, but is not limited to, the following responsibilities:

- to uphold universal human rights standards, especially those in UN Conventions ratified by the Australian Government
- to uphold labour rights, including occupational health and safety
- to operate in ways which will minimise or preclude environmental damage
- to implement the principle of Free, Prior and Informed Consent (FPIC), especially when operating in Indigenous communities
- to practice transparent revenue reporting to both shareholders and the general public
- to operate in ways which promote sustainable development and livelihoods in the communities in which Australian corporations work
- to work to Australian business standards, regardless of the location of the operation (unless operational standards at the location are more stringent—in which instance, those standards should be upheld).

3. The growing need for corporate responsibility

As Australian corporations participate in an increasingly globalised market, they are taking up diverse opportunities throughout the developing world. In many instances, this means that Australian corporations are operating in nations where poverty is rife, regulatory frameworks are weak or poorly enforced and corruption can be prevalent. In these situations it is important for companies to contribute positively to poverty alleviation and sustainable development by protecting and upholding the human rights of people affected by their activities. It is also essential that Australian corporations operating overseas do not conduct business in ways which would be socially or environmentally unacceptable within Australia.

BHP Billiton is one corporation which has travelled the path from the scandal of environmental degradation at the Ok Tedi mine to actively engaging in CSR. For example, in Tintaya, Peru, BHP supported community dialogue processes which have led to positive outcomes for the community and the company. Other Australian based and ASX listed companies operate outside of Australian environmental guidelines, and have yet to make the true shift to CSR culture. For example, on Marinduque Island, Philippines, the ASX listed Placer Dome refuses to take responsibility for the clean up and compensation of its tragic mine legacy. This is despite the fact that the corporation has been lauded, based on other examples, for its CSR practices. This duality of practice demonstrates the potential for CSR to become a mere public relations exercise. Additionally, the more recent allegations against Anvil Mining's operations in the DRC demonstrate the potential for Australian companies to become involved in local conflict and allegations of human rights violations. Arguably, Anvil would not be in this predicament if it had followed to best CSR practice and followed human rights standards adhered to in Australia.¹

Such cases demonstrate that there is an ongoing need for clear, enforceable corporate responsibility standards for Australian corporations. Australian companies operating in the global market must be held to account for actions which are inconsistent with universally agreed human rights, labour, environmental and social

¹ See Appendix for further information on these cases.

standards. They can and must take responsibility for their environmental, social and economic impacts of their operations, and make real efforts to reduce negative impacts.

4. Why is corporate responsibility ‘good for business’?

Oxfam Australia believes that adoption of corporate responsibility reporting on companies’ social, environmental and economic impacts can have significant benefits both for companies and the communities in which they operate. These benefits include:

- reduced risk of litigation
- obtaining a social licence to operate in addition to a regulatory licence to operate
- reduced costs for industry
- increased goodwill towards Australian investment abroad
- improved global reputations of Australian corporations and industries
- increased efficiency through creation and enforcement of transparent, overarching responsibility guidelines
- a more ‘balanced global playing field’ for Australian corporations
- extermination of corrupt practices and contribution to conflict
- improved relationships between corporations and the communities in which they work
- reduction in political backlash and instability.

Research findings clearly demonstrate the importance of corporate responsibility to corporations’ public reputations and successful operations.

A recent report by leading Australian law firm Corrs Westgarth Chambers noted that public desire for corporate responsibility is becoming a ‘cultural norm’ within Australia.² The trend for corporate responsibility is also reflected internationally by companies’ changing reporting practices. A 2002 Barometer Survey by Pricewaterhouse Coopers found that two-thirds of European multinational corporations and 41 per cent of US multinationals consider the ‘Triple Bottom Line’—people, planet, profit—in their reporting.³

5. The need for mandatory corporate responsibility reporting

One of the major debates around corporate responsibility and Triple Bottom Line reporting is whether this reporting should be voluntary (i.e. ‘self-regulating’) or mandatory (i.e. legally enforceable). Organisations such as the World Bank, for example, staunchly contend that reporting should be voluntary. The Bank, in its *Final Management Response on the EIR*, states that ‘a voluntary approach to transparency that puts great emphasis on country initiative and ownership will generally be more effective than imposition of conditionality by donors’.⁴ The Bank,

² Lumsden, A. (2005). *Corporate Social Responsibility: the case for a self-regulatory model*. 31 August. Melbourne: Corrs Westgarth Chambers.

³ Pricewaterhouse Coopers (2002). *New Era of Transparency*. PWC Barometer Business Survey. 26 September. New York: PWC.

⁴ World Bank. (2004). *Striking a Better Balance—The World Bank Group and Extractives Industries: The Final Report of the Extractive Industries Review: World Bank Group Management Response*. 17 September. Available:

however, does not extrapolate its evidence for this position, despite contentions against it. Other organisations supporting voluntary reporting often fail to fully support the benefits of voluntary reporting over mandatory reporting.

While Oxfam Australia supports moves toward corporate responsibility and more comprehensive reporting, the agency is concerned that corporate responsibility reporting will not be wholly effective unless it is mandatory. This is the case for several reasons:

- Lack of enforceability generates an ‘accountability gap’, whereby companies operating in bad faith or with poor practices fall through the cracks or, worse for industry, draw negative media attention. In short, those companies who attempt to operate to corporate responsibility standards may ‘lose out’ to those whose practices are less than optimal.
- Mandatory public disclosure of corporate responsibility reports is essential to enabling communities to trace economic, social and environmental impacts of Australian corporations in their communities, thereby allowing them to address areas of concern. This facilitates communities to uphold their human rights.
- Many Australian corporations now operate in developing countries ‘desperate for foreign investment’.⁵ This frequently means that government enforcement of regulatory frameworks can be weak and accountability, therefore, is weak. Mandatory reporting would help to eradicate government corruption, misappropriation and squandering of funds, as well as limit environmental degradation and negative social impacts.

6A. Alternative mechanisms: ‘checking up’ on corporate responsibility

Oxfam Australia believes that an independent monitoring mechanism is crucial to the effectiveness and validity of corporate responsibility, even if reporting is made mandatory. Over the past five years, Oxfam Australia’s Mining Ombudsman Project has investigated community complaints against the actions of Australian Mining companies operating throughout Asia, Central America and the Pacific.

The Oxfam Australia Mining Ombudsman follows a formalised investigation process and undertakes roles, similar to those used by the World Bank’s International Finance Corporation/Multilateral Investment Guarantee Agency’s (IFC/MIGA) Compliance Advisory Officer and the International Institute for Environment and Development (IIED).⁶ The Mining Ombudsman enables communities to participate in

[[http://siteresources.worldbank.org/INTOGMC/Resources/ finaleirmanagementresponse.pdf](http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf)]. Accessed: 16 August 2005.

⁵ Bais, K. (2005). *Corporate Social Responsibility: Perspectives from the South*. Amsterdam: SOMO Centre for Research on Multinational Corporations.

⁶ See Appendix for more information on these standards and mechanisms. IFC/MIGA (2005). Compliance Advisor Officer: Background and Information. Available: [http://www.cao-ombudsman.org/html-english/about_background.htm]. Accessed: 6 September, 2005.; IFC/MIGA (2003). *Compliance Advisor/Ombudsman Annual Report 2002-2003*. Washington, DC: IFC/MIGA.; Orellana, M. (2002). *Code of Codes: Compliance Oversight*. Paper commissioned by the Mining Minerals and Sustainable Development project, January. Washington, DC: IIED.; Friends of the Earth (2005). *Briefing: Corporate Accountability*. April. London: Friends of the Earth.

decision-making and fosters their ability to address negative economic, social and environmental impacts.

The Mining Ombudsman framework incorporates three key roles, which would be vital to a successful corporate responsibility monitoring mechanism:

- **Complaints handling**—receiving and investigating community complaints and making detailed recommendations to the communities, the company and, where needed, to industry.
- **Advisory**—providing advice to corporations and government on developments required in policy and standards.
- **Monitoring and compliance**—ensuring companies comply with the recommendations from the complaints mechanism, and that the industry implements appropriate standards and policies.

A useful monitoring mechanism would guarantee a level playing field amongst Australian companies. The mechanism should be crafted around a framework which considers:

- **Standards:** A monitoring mechanism must be embedded in international human rights standards. Should Australian laws provide higher standards than those codified in the international human rights system, those higher standards should be followed.
- **Enforcement:** A monitoring mechanism cannot be wholly significant without the power of enforcement. The mechanism should have legislative authority, both intra and extra-territorial, to penalise non-performing corporations.
- **Independence:** For a mechanism to be worthwhile, it must be trusted and respected by those parties who might use it.
- **Funding:** It is essential that a monitoring mechanism have appropriate financial resourcing which will allow it to operate efficiently and effectively. Funding sources should be openly reported and should not compromise the mechanism's independence.
- **Accessibility:** A monitoring mechanism must be free of charge and easily accessible to those parties who might request an investigation. All information should be translated into relevant languages and dialects and should be widely distributed.
- **Transparency and accountability:** A monitoring mechanism must be completely transparent and accountable to be of merit. Complete transparency includes public release of all investigatory information and financial records. The identities of complainants and witnesses should be kept confidential where necessary for security reasons.

6B. Transparency and accountability initiatives and reporting practices

Oxfam International is a member of the Publish What You Pay (PWYP) coalition—a 250 NGO strong initiative which calls for 'reciprocal reporting', wherein corporations not only openly report their revenues, but governments report their earnings from those corporations. Transparent revenue reporting and accountability, as espoused by PWYP and initiatives, such as the Extractive Industries Transparency Initiative—launched in 2002 by British Prime Minister Tony Blair—indicate the progressive support for open fiscal reporting through a range of jurisdictions. These initiatives

also offer productive models on which to base transparency and accountability legislation.⁷

Oxfam Australia has recently furthered its support for transparency and accountability initiatives through its initiatives in Timor-Leste through an ongoing training, awareness raising and mentoring program with a number of CSOs and dialogue with the Government of Timor-Leste, including submissions to the drafting team and then the Parliament on the drafting and approval of the Timor-Leste Petroleum Fund Act. Oxfam's submission calls for strong transparency legislation, which would position Timor Leste as a world leader in combating opaque financial practices, and which could be meaningfully applied within an Australian context. Of particular relevance to Australia, Oxfam Australia recommends:

- mandatory revenue reporting
- reciprocal reporting
- public access to reports in accessible, appropriate language
- reports to be translated into relevant languages and dialects
- clear definitions of what information can remain confidential—to prevent the misuse of claims to confidentiality to obscure reporting
- independent, timebound auditing of reports
- establishment of a monitoring mechanism, which has the power to initiate investigations and has set rules for appointment of mechanism representatives.

Along these lines, Oxfam Australia has recently undertaken joint training with PWYP in Timor Leste to increase civil society awareness of the need for revenue transparency as a means of advancing good corporate responsibility. This training is also easily adaptable to an Australian context and includes training in community-level revenue monitoring and budgeting practices and evaluation methods. Similar methods are also outlined in the Revenue Watch guides "Follow the Money" and "Covering Oil".⁸

7. Conclusion

Oxfam Australia believes that private sector investment can be a driver of economic growth and poverty reduction, provided appropriate regulations and controls exist. By adopting appropriate corporate responsibility guidelines, based in human rights; requiring mandatory corporate responsibility reporting; and providing an independent monitoring mechanism, the Australian government has an important opportunity to position Australian corporations as global leaders in corporate social responsibility. Appropriate government action on this issue could boost corporations' transparency and accountability, mitigate negative impacts in developing countries, and improve Australia's corporate competitiveness and reputation on a global scale.

Oxfam Australia: September 2005

⁷ See Appendix for more information on PWYP and EITI.

⁸ See: Shultz, J. (2005). *Follow the Money: A Guide to Monitoring Budgets and Oil and Gas Revenues*. New York: Open Society Institute.; Tsalik, S. and Schiffrin, A. (eds.) (2005). *Covering Oil: A Reporter's Guide to Energy and Development*. New York: Open Society Institute.

Appendix

Mining Ombudsman Cases

Tintaya, Peru

The case of Tintaya, Peru demonstrates how CSR can mitigate negative social and environmental impacts, and illustrates the potential effectiveness of a monitoring mechanism to facilitate positive results.

In 2001, five communities affected by the BHP Billiton owned Tintaya copper mine in Espinar, Peru requested that the Oxfam Australia Mining Ombudsman investigate their situation. Their grievances included: forced evictions with little to no compensation; loss of livelihoods; pollution; lack of employment opportunities and increased violence against women. The Ombudsman facilitated a multi-stakeholder dialogue (the Dialogue Table) that included the communities, civil society and the company, BHP Billiton. Five working commissions followed in 2002, and the Ombudsman undertook evaluations in April and October 2003. While far from perfect, these processes have produced tangible improvements:

- Increased participation of women in decision-making, and increased community access to information in local languages, to inform their decision-making.
- An in-principle agreement that each community will receive land of 125 – 150 percent of the area of land previously acquired by the company, depending on that land's value. A sustainable development package is still under discussion but progressing.
- BHP Billiton set up a 'Framework Agreement' pledging an annual \$US1.5 million or three percent of before-tax mine profit (whichever is greater) to fund sustainable development programs. Unfortunately some communities were frustrated by inadequate consultation during the setting up of this agreement.
- Training by local NGO CooperAccion to enable participation by community members in Community Environmental Surveillance programs.

Marinduque Island, Philippines

Placer Dome is now the world's sixth largest gold producer, and is listed on the Australian Stock Exchange. In 2002, community members from around Marinduque asked Oxfam Australia's Mining Ombudsman to investigate the tragic mine legacy of Placer Dome's Marcopper copper mine on Marinduque. Community members report that they have faced environmental disasters, loss of livelihoods, illness and even death because of the mine. The collapse of a tailings dam and mine waste drainage tunnel, in 1993 and 1996, respectively, have spread contaminated mine tailings throughout Marinduque's river systems. Even today, Hessian bags of tailings line the banks of the Boac river, awaiting proper disposal.

Placer Dome claims it has no responsibility for the mine's legacy. The company says that it was not the owner and operator of the Marcopper mine and that responsibility for any on-going problems at Marinduque should be directed to Marcopper Mining Corporation. This is a challenging prospect, as it is difficult to ascertain who now owns Marcopper and its main shareholder, F Holdings. Additionally, numerous documents and reports indicate that Placer Dome did actively manage Marcopper operations.

Placer Dome's handling of the Marcopper mine clean up strongly demonstrates the need for enforceable, transparent corporate accountability standards. Whilst the people of Marinduque still face the daily impacts of the mine's legacy, Placer Dome receives accolades for its corporate responsibility. Their selective employment of corporate social responsibility demonstrates how CSR quickly loses meaning when standards are flexible and not enforceable. Solid corporate responsibility guidelines, combined with mandatory reporting, could help to alleviate the traumas of legacies such as this.

Standards and mechanisms: IFC/MIGA and IIED

IFC/MIGA Compliance Advocacy Officer

The IFC/MIGA Compliance Advocacy Officer (CAO) was recently established 'to develop the most appropriate mechanism allowing individuals and communities impacted by IFC and MIGA projects to raise their concerns directly. The CAO advises the IFC/MIGA on how to address complaints, undertakes compliance audits—according to set environmental and social performance standards, and provides independent advice to the IFC/MIGA Board on environmental and social policies, guidelines, procedures and resources. The CAO aims to increase accountability for IFC/MIGA projects which may affect communities, but which previously provided no means for redress of grievances.

For further information, see: www.cao-ombudsman.org

IIED

The IIED's 'Code of Codes' document provides a relevant starting point for outlining a monitoring or complaints mechanism. The Code of Codes purpose is twofold:

- 1) to 'provide benchmarks against which industry performance may be measured
- 2) to discuss the potential of a mining ombudsman which could amplify 'the voices of mining affected persons and communities'.

The Code takes a rights based approach and recommends that a monitoring function not be attempted by one individual or institution. Instead, the IIED recommends that the roles of a monitoring mechanism must be clearly defined in advance. Organisations and government must determine which monitoring and advisory functions a mechanism will undertake, such as, ensuring compliance through impartial, independent oversight or provision of policy advice to corporations operating in the industry. The IIED argues that one mechanism could not possibly undertake both compliance and advisory roles effectively. It seeks to preclude conflicts of interest by recommending that 'the main objective of an ombudsman is to ensure that the rights of affected persons and communities are not compromised in any way'. Undertaking compliance audits, set in predetermined principles, could then be an instrumental but subsidiary role of the mechanism.

For further information, see: www.iied.org/mmsd/mmsd_pdfs/056_orellana.pdf

Publish What You Pay

Publish What You Pay (PWYP) was founded by Oxfam International, Global Witness, CAFOD, Save the Children UK, Transparency International UK and the Open Society Institute. Since its inception in 2002, the PWYP coalition has grown to include over

250 NGOs worldwide, and is active in over 50 developing countries, including Indonesia, the Philippines and Timor Leste.

PWYP not only requests that companies publish what they pay to governments, but that governments, in turn, reveal what they receive from companies. This reciprocal reporting is seen as a key element in holding both industry and government accountable, thereby mitigating corruption and helping to alleviate poverty. PWYP's calls for accountability are somewhat stronger than the EITI, in that the campaign requests the mandatory reporting of tax, fee and royalty payments. See:

For further information, see: www.publishwhatyoupay.org

Extractives Industry Transparency Initiative

The Initiative, launched by British Prime Minister Tony Blair in 2002, aims to increase transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by those host country governments. The Initiative states that 'the lack of accountability and transparency in these revenues can exacerbate poor governance and lead to corruption, conflict and poverty'. EITI believes that extractives industries can be the source for both economic growth and social development, if public revenues are managed properly.

For further information, see: www.eitransparency.org