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Dear Senators,

Re: Fair Trade (Workers' Rights) Bill 2013

Slavery Links Australia Inc thanks the Standing Committee on Foreign Affairs, Defence and Trade for its invitation to provide a submission in relation to the Fair Trade (Workers' Rights) Bill 2013 (the Bill). Slavery Links is prepared to give evidence in person if the Committee wishes.

1. Who is Slavery Links Australia?

Slavery Links is a community association incorporated in Victoria. The association is a charity. Members and Directors work *pro bono*. The work of the association refers to the Supplementary Convention 1956 and Division 270 of the Criminal Code (Cth).

Slavery Links is the publisher of *Australians and Modern Slavery* (300 pp). Section 2 of the book provided 83 pages of analysis of how the international conventions of the United Nations (UN) and International Labour Organisation (ILO) intersect with modern day slavery.

2. Summary of submission

In Slavery Links' submission, the Bill is to be welcomed. It seeks to address a real problem.

This submission provides some evidence and argument which supports the need for the Bill. Slavery Links recommends possible strengthening to be considered. Finally, to assist the Committee in framing possible questions, the submission addresses some of the evidence provided and some claims made in other submissions.

3. Slavery Links supports the Purpose of the Bill

The Bill requires the Commonwealth, through the minister, to ensure that an amended or new trade agreement with a country includes a binding agreement for minimum standards about workers' rights in the other country's domestic law. The minimum standards are to be derived from international agreements which are listed in the Bill.

In Slavery Links' submission the Bill would have at least three positive effects:

- A. It would assist Australia to meet its obligations to implement international agreements to which Australia is a signatory
- B. It would encourage Australia's trading partners to provide their workers with access to minimum standards regarding workers' rights
- C. It would support standards in Australia, to the benefit of Australian workers and business

Let us deal with each of these in turn.

- A. The Bill would assist Australia to meet its obligations to implement international agreements to which Australia is a signatory.

These obligations go beyond passing laws in Australia: they include the international promotion of the terms of agreements. This aspect has been covered by Australian Lawyers for Human Rights (ALHR, Submission 7) under the heading "The promotion of labour standards internationally".

Slavery Links supports that aspect of the ALHR submission and repeats it here.

- B. The Bill would encourage Australia's trading partners to provide their workers with access to minimum standards regarding workers' rights.

The positive effects would arise from the promotion of global trade that is socially sustainable. This aspect gives voice to people's rights to development, as expressed in resolution 17/4 of the Human Rights Council, 2011.¹ The Resolution referred to Guiding Principles for "*enhancing standards and practices with regard to business and human rights, and thereby contribute to a socially sustainable globalization ...*"

¹ Human Rights Council 2011 Seventeenth session Agenda item 3:

Resolution 17/4 "Human rights and transnational corporations and other business enterprises", Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

i. The Bill would enable Australia to be an agent for change in the region

The persistence of slave-making systems in the region (see Point 5 below) demands that Australia's trading partners do better in setting and applying work standards. Australia is a significant player in the regional economy. The Bill would in effect put Australia's economic muscle and reputation behind the impetus for compliance.

Note that by compliance, we mean compliance with existing international standards. The Bill does not set new or unreasonable standards internationally.

ii. The Bill would facilitate possible change-making by Australian businesses

The Bill would strengthen the framework for compliance with accepted international standards. Such a framework was promoted recently in Pakistan by an Australian businessman, Andrew Forrest.² A possible future investment was made conditional on bringing an end to one form of slavery in Pakistan, namely debt bondage.

Such initiative would only be possible where a trading partner had recognised enforceable work standards in place. The Bill is to be supported because it would encourage this.

C. The Bill would support standards in Australia, to the benefit of Australian workers and business

The submission from the Construction, Forestry, Mining and Energy Union of Australia (CFMEU, Submission 6) pointed out that the Bill would assist creation of a level playing field for Australian workers. Slavery Links supports that conclusion and in addition points out that the Bill would also create a more level playing field for Australian businesses operating in Australia.

Slavery Links supports that aspect of the CFMEU submission and repeats it here.

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We now turn to two areas where the Bill could be strengthened.

² ABC News (2014) "Mining magnate Andrew Forrest announces coal conversion deal to free 2.5m from slavery in Pakistan" ABC News 23 Jan 2014, Go to: <http://www.abc.net.au/news/2014-01-23/andrew-forrest-announces-plan-to-free-25m-slaves/5215032>

5. Slavery Links requests strengthening of Section 8 of the Bill

Section 8 of the Bill lists minimum standards as set out in eight international conventions.

In the submission of Slavery Links, at least two further standards need to be added:

- A. Regarding freedom from slavery: The condition of slavery goes beyond every-day exploitation (which is the condition dealt with in ILO treaties). Slavery involves exercise of the rights of the powers of ownership by one person over another. This change of state from free to un-free is what makes slavery a crime against humanity. Australia and virtually all other countries are signatories of the Supplementary Convention 1956, yet slavery and slave-making systems persist, especially in the Asia Pacific region. In a global market, Australia is exposed to these persistent contemporary forms of slavery. Cases of slavery have been found in Australia.

To be consistent with Australian Law, Section 8 of the Bill would need to refer to the standard set under Australian law or at least the Supplementary Convention 1956.

- B. Regarding freedom from forced labour. In Australia, the Criminal Code (Cth) provides for a gradation of offences with forced labour involving serious exploitation where a person cannot in effect leave the workplace.

To be consistent with Australian Law, Section 8 of the Bill would need to refer to the standard set under Australian law or at least the ILO Convention on Forced Labour.

It is in Australia's interests to eliminate slavery in the region, to encourage trading partners to end slavery, slave-like practices and slave-making.

In that regard, in addition to encouragement and incentives, some sort of enforcement and or sanctions regime would seem to be needed (see the example of Burma below).

6. Slavery Links requests strengthening of Section 5 (1) of the Bill

Section 5 (1) of the Bill provides for Ministerial discretion. In the submission of Slavery Links the Minister's discretion needs to be clarified. Slavery Links does have concerns that Section 5 (1) allows the Minister to avoid international commitments that are set out in Section 8 of the Bill. Setting a standard in Section 5 (1) that was equal to worker rights in Australia would have the effect of establishing a level playing field between Australia and trading partners.

7. Slavery Links requests due regard for evidence of breaches of worker rights in the region

On the question of evidence of breaches of worker rights, the Home Loan Experts (Submission 1) refer to two instances. It is noted that these were reported by Australian press and media. The Home Loan Experts submitted that:

“One of the most apparent examples would be Bangladesh, where recently a factory building collapsed due to shoddy construction and unsafe working conditions and an estimated 1,129 people died. Less than six months before this, another factory building caught fire and more than 100 people died. In this case too, unsafe working conditions as well as poor maintenance and planning were the cause behind the large number of deaths.”

Other examples could be cited, which were reported in Australia, such as the reported abuses at the Foxconn factories in PR China.

Yet the Business Council of Australia (BCA, Submission 4) asserted that there is a

“lack of evidence supporting the effectiveness of the proposed provisions in enhancing minimum standards for workers’ rights in other countries.”

It is difficult to see how the BCA has regarded such examples from the region as not evidencing the need for and potential efficacy of remedial measures. It is possible that the BCA has discounted the above reports because they originated from media enquiries and not from an internationally constituted inquiry.

If that is the standard of evidence that BCA seeks to be applied, then Slavery Links refers to the 1998 report of the inquiry conducted in Burma pursuant to the ILO Forced Labour Convention. Hon Robyn Layton AO, formerly a Judge of the Supreme Court of South Australia, was one of three international jurists³ who conducted the inquiry. The report³ of around 400 pages documented case after case of forced labour and other work abuses in the Burma of the time. It was the combination of evidence gathering, relentless reporting, the threat of sanctions under Article 26 and the possibility of growing trade sanctions which prompted the regime in Burma to negotiate change in social economic employment and political conditions in that country. Those changes are developing in the current period, to the benefit of local people, businesses and trading partners including Australia.

The position of the BCA is (with respect) wrong; and has been expressed in the face of substantial evidence of the need for and potential efficacy of remedial measures to be taken in line with international agreements.

³ ILO (1998) REPORT OF THE COMMISSION OF INQUIRY **appointed under Article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)**

8. Slavery Links requests due regard for evidence of breaches of worker rights by Australian businesses operating in the region

On occasion, an Australian business has been found doing business in the region in circumstances where labour abuses have occurred. For example:

- A. Australian companies did business with the Bangladeshi factories involved in the above abuses, fire and building collapse.
- B. An Australian business was found to be importing Sherrin Footballs, which it subsequently admitted were tainted by child labour.

Subsequently, several Australian companies (but not all) have been negotiating a compact for worker rights in Bangladesh. The effect of the compact would be to protect workers and to protect the reputations of those Australian companies that have taken steps to rid their supply chains of forced labour and or child labour. Subsequently Sherrin arranged to lift standards and protect children associated with the factory.

Note that the compact in Bangladesh and Sherrin's action referred to internationally accepted standards. It is unclear why the BCA submission was apparently unwilling to acknowledge the utility of the standards or the relevance to the Bill of these instances.

The BCA has provided no evidence that the standards would be deleterious to any parties involved. Working without standards might reduce dollar costs by pushing the social costs off balance-sheet, but the social costs would continue as externalities to be borne by the local community. The standards in the Bill would go some way to recognising the externalities.

9. Policy announcement: Foreign Aid

On 18 February, 2014, the Australian Financial review reported that:

The Abbott Government has officially removed poverty reduction from the goals of the foreign affairs budget, smoothing the way for the annual \$5 billion spend to be redirected to a program that focuses more on growth and co-investment with the private sector."

This new policy provides that business will be involved in the public-private partnerships to develop infrastructure projects in the region. This policy adds weight to the argument that each partner, business and government, will need clear guidelines that refer to internationally accepted standards.

10. Conclusion

Slavery Links urges the Committee to give favourable consideration to passing the Bill, in a strengthened form where possible.

Yours sincerely

Roscoe Howell
Secretary