AUSTRALIAN LAWYERS FOR HUMAN RIGHTS™

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Dear Secretary and Senators,

Fair Trade (Workers' Rights) Bill 2013

Australian Lawyers for Human Rights (ALHR) is pleased to provide this submission in relation to the Fair Trade (Workers' Rights) Bill 2013 (the Bill). ALHR thanks the Standing Committee of Foreign Affairs, Defence and Trade for the invitation to provide this submission.

ALHR considers that passing the Bill will assist Australia to meet its obligations as a member of the International Labour Organization (ILO) and to promote human rights on a global level, to follow specific recommendations that have been made by human rights organizations, and to add its voice to the growing international consensus that promoting labour standards in other countries is justified in both a social and economic sense.

Labour standards and human rights

Articles 23 and 24 of the *Universal Declaration of Human Rights* deal specifically with labour-focused human rights, among those being the right to just and favourable conditions of work, equal pay for equal work, just and favourable remuneration, and the right to form and join trade unions.[1]

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) also acknowledges that the right to work, and the right to "just and favourable conditions of work"[2], or "decent work"[3] as well as the right to form trade unions[4] are fundamental human rights. Labour-focused human rights are recognised in other instruments such as: the *International Covenant on Civil and Political Rights*[5], the *International Convention on*

[1] *Universal Declaration on Human Rights*, GA Res. 217A(III), UN GAOR, 3rd Sess., UN Doc. A/810 (Dec. 10, 1948), arts 23, 24.
[2] *International Covenant on Economic, Social and Cultural Rights*, opened for signature 15 December 1966 993 NTS 3, (entered into force 3 January 1976) arts 6, 7.
[3] Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Article 6 of the Covenant*) UN Doc E/C 12/GC/18 (6 February 2006).
[4] *ICESCR*, art. 8.
[5] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966 999 UNTS 171, (entered into force 23 March 1976) art. 8, para 3(a).

the Elimination of All Forms of Racial Discrimination[6], the *Convention on the Elimination of All Forms of Discrimination against Women*[7], and the *Convention on the Rights of the Child*[8].

The ILO has adopted minimum labour standards which give effect to labour-focused human rights. The ILO's 1998 *Declaration on Fundamental Principles and Rights at Work* states that, of the rights articulated in the various ILO conventions, the following principles are considered fundamental:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;
- The effective abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.[9]

The promotion of labour standards internationally

Australia, having ratified the ICESCR, has an obligation to take steps, individually and through international co-operation, towards the full realisation of human rights recognised in the ICESCR, including the rights articulated in articles 6, 7 and 8.[10]

The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment Number 18, noted that "To comply with their international obligations in relation to article 6 [of the ICESR], States parties should endeavour to promote the right to work in other countries as well as in bilateral and multilateral negotiations."[11] The CESCR also noted the interdependence of articles 6, 7 and 8 and that the "characterization of work as decent presupposes that it respects the fundamental rights of the worker".[12] It is therefore implied that the promotion of the right to work in other countries encapsulates the promotion of the protection of the fundamental rights of workers in other countries.

Member states of the ILO, of which Australia is one, are obliged "to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights".[13] The inclusion of labour standards in free trade agreements is one way of promoting these fundamental rights on a global scale, and the ILO contemplates that its objectives might be furthered by way of "national and international policy" of its member states.[14]

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[6] *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966 660 UNTS 195 (entered into force 4 January 1969) art. 5, para (e)(i).

[7] *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art. 11, paras 1(a), (b) and (d).

[8] *Convention on the Rights of the Child*, opened for signature 20 November 1989 1577 UNTS 3 (entered into force 2 September 1990) art. 32.

[9] International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work*, June 1988.

[10] See *ICESCR*, art. 2 and CESCR, *General Comment No. 3*: *The Nature of State Parties' Obligations* UN Doc E1991/23 (14 December 1990).

[11] CESCR, *General Comment No. 18*.

[12] CESCR, *General Comment No. 18*.

[13] ILO, *ILO Declaration on Fundamental Principles and Rights at Work*, June 1988.

[14] ILO, *Declaration concerning the Aims and Purposes of the International Labour Organisation*, 10 May 1944.

In addition to promoting labour-focused human rights internationally, the enactment of the Bill would also allow Australia to implement specific recommendations made by human rights mechanisms.

For example, it has been noted by the Committee on the Rights of the Child (CRC), that there have been reports of child labour and poor working conditions of children that are in contravention of international standards in certain enterprises operated by Australian businesses overseas.[15] The Committee on the Rights of the Child recommended that Australia ensure the legal accountability of Australian companies and their subsidiaries operating overseas regarding abuses to human rights.[16]

Requiring other countries that enter into free trade agreements with Australia to meet minimum labour standards, would assist Australia in following the recommendations of the CRC, and to contribute as far as possible to the implementation of the recommendations of this and other Committees overseeing international human rights mechanisms. As a result the workers can review their relationship with the government and take appropriate measures to ensure that they are not taken advantage of.[17]

Guiding Principles on Human Rights and Business

ALHR also acknowledges the Government's support for the progress of the Guiding Principles on Business and Human Rights (the Guiding Principles) through the United Nations processes and this inquiry. The Guiding Principles are a significant contribution to addressing the impact on human rights by business and aim to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.[18]

However, it is also important to note that the Guiding Principles are not the only way in which human rights are relevant to and need to be addressed by this inquiry. There are many other mechanisms addressing human rights and business. ALHR urges the committee to be cognisant of development of international laws about human rights impacts of business activity globally, in all areas of law.[19] These developments are furthered by States ensuring that the trade agreements they enter do not enable the undercutting of basic human rights standards. In this case, those standards are represented by the requirement for ILO minimum standards as part of bilateral trade agreements.

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[15] Concluding Observations: Australia, Committee on the Rights of the Child, 2012, Available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf>

[16] Concluding Observations: Australia, Committee on the Rights of the Child, 2012, Available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf>

[17] David Weissbrodt and Connie de la Vega, *International Human Rights Law* (University of Pennsylvania Press, 2007) 279-284.

[18] Resolution A/HRC/RES/17/4.

[19] eg: the OECD Guidelines for Multinational Enterprises; the UN Global Compact; the multi-stakeholder Voluntary Principles on Security and Human Rights; the finance/investment industries' Equator Principles and Principles for Responsible Investment Initiative; the World Banks' various guidelines and policies on Environmental, Health and Safety; the multi-stakeholder Kimberly Process Certification Scheme; the UN Security Council's resolutions on Conflict Minerals, World Bank-OECD seminar on ICITE, Washington D.C., September 2012 eg 'Openness to trade'.

International consensus – an economic and social rationale

It has been outlined by the International Centre of Trade and Sustainable Development, that the implementation of labour standards generates improvements in social and economic benefits for workers in developing nations, and compliance with labour standards can increase a nations' competitiveness, as compliance with these standards may be demanded by some private sector actors, and many consumers avoid products which have been produced in countries where fundamental ILO labour standards are infringed.[20]

ALHR considers that the Bill is consistent with the growing international consensus that labour standards should form part of bilateral trade agreements, as there is a strong economic and social rationale to promote these standards.[21] The ILO has reported that labour provisions were included in one third of all trade agreements coming into force between 2005 and 2013.[22] The Bill's aim of adopting ILO labour standards, and ensuring that they are incorporated into the domestic law of Australia's potential trading partners, is a welcome development, that ensures the protection of worker's rights globally, and the creation of a more level playing field, in an increasingly globalized economy.

Passing the Bill into law would comply with Australia's obligations under the ILO convention. The Director General of the ILO selects independent experts to undertake direct contacts with governments as to issues raised by the Committee of Experts and other supervisory instruments. The Bill is an important instrument which will be considered in the reporting process. The Australian government would be seen by the UN Committee and its various mechanisms, as complying with its obligations to ILO labour standards internationally.[23]

Conclusion

The Bill requires that Australia must be satisfied that the ILO's minimum labour standards are incorporated in the domestic law of states as a prerequisite for entry into a trade agreement with that state. ALHR acknowledges that this is an important step in the furtherance and promotion of international human rights standards and working conditions in Australia's dealings with its international trade partners.

Australia's promotion of the minimum labour standards on an international level would demonstrate a commitment to the labour-focused human rights outlined in the ICESCR and other international instruments which Australia has ratified. The enactment of the Bill would go some way to fulfilling the recommendation of CESCR that the right to work (with

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[20] International Centre of Trade and Sustainable Development, Trade Agreements and their relation to labour standards: the current situation, November 2009, available at http://ictsd.org/downloads/2011/12/trade-agreements-and-their-relation-to-labour-standards.pdf

[21] International Labour Organization (International Institute for Labour Studies), Social Dimensions of Free Trade Agreements, 2013, available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_228965.pdf>

[22] International Labour Organization (International Institute for Labour Studies), Social Dimensions of Free Trade Agreements, 2013, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_228965.pdf

[23] David Weissbrodt and Connie de la Vega, above n 17.

the implication that such 'work' respects the labour rights of workers) should be promoted in other countries.

About ALHR

ALHR was established in 1993. ALHR is a network of Australian lawyers and law students active in practising and promoting awareness of international human rights. ALHR has a national membership of over 3,000 people with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law and human rights law in Australia.

Yours sincerely

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