

The Senate

Foreign Affairs, Defence and Trade
Legislation Committee

Fair Trade (Workers' Rights) Bill 2013

March 2014

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Chapter 1

Introduction

Referral and consideration of the bill

1.1 On 27 June 2013 the Fair Trade (Workers' Rights) Bill 2013 was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee. The bill lapsed at the end of the 43rd Parliament. On 4 December 2013, the Senate agreed that the bill be re-referred to the committee for consideration and report by 4 March 2014. The reasons for referral originally cited by the Selection of Bills Committee were:

- The impacts this Bill will have on international labour standards with our trading partners.
- The impact this Bill will have on Australian business' competitiveness.
- Consideration on how this bill will advance human rights in developing nations which sign trade agreements with Australia in the future.
- Comment on the definition of the *minimum labour standards* definition.¹

1.2 In his second reading speech for the bill, Senator Madigan advised the Senate that the bill:

Is the first in a series of Fair Trade Bills I intend to introduce in the hope of bringing us closer to that mythical 'level playing field' we are told we enjoy through our international trade agreements.²

1.3 Senator Madigan introduced the second Fair Trade bill, the Fair Trade (Compliance of Imported Goods of Imported Goods with Australian Standards) Bill 2013 on 27 June 2013 (the bill has not yet been re-introduced). It is the Senator's intention to introduce further bills, on 'Intellectual Property and Patent Protection and Biosecurity and Food Standards' at a future date.³

1.4 Senator Madigan explained that the purpose of the bill is twofold:

First it aims to demonstrate that the Australian people care about the rights of workers, not only in Australia but across the world.

Second, it aims to make Australian industries more competitive in our home markets and to protect the jobs of Australian workers and small businesses.⁴

1 Selection of Bills Committee *Report No. 8 of 2013*, 27 June 2013, Appendix 2.

2 *Fair Trade (Workers' Rights) Bill 2013*, Second Reading Speech, p. 1.

3 *Fair Trade (Workers' Rights) Bill 2013*, Second Reading Speech, p. 1.

4 *Fair Trade (Workers' Rights) Bill 2013*, Second Reading Speech, p. 1.

1.5 The Explanatory Memorandum for the bill includes a Statement of Human Rights Compatibility which outlines the ways in which the bill is consistent with human rights.

Conduct of inquiry

1.6 The committee advertised the inquiry on its website and via social media (@AuSenate). It also wrote to relevant ministers and departments, and contacted a number of other organisations inviting them to make written submissions. The committee received twelve submissions from the two inquiries it has conducted into the bill. Submissions are listed at Appendix 1, and are available on the committee's website.

Chapter 2

Consideration of the bill

Trade agreements and current trade policy

2.1 The Department of Foreign Affairs and Trade (DFAT) declined to make a submission to the inquiry. However, in response to a question on notice from a Supplementary Estimates hearing in November 2013, DFAT advised that the government's current trade policy is as outlined in the *Coalition's Policy for Trade*, dated September 2013.¹ The policy focuses on concluding long-running free trade negotiations and enhancing Australia's commitment to regional and multilateral trade.² The policy will be implemented through priority given to free trade negotiations, restoring funding to the Export Market Development Grants, enhancing Australia's commitment to APEC and the WTO, and re-establishing the Trade Advisory Council.³

2.2 DFAT defines a Free Trade Agreement (FTA) as:

...an international treaty which removes barriers to trade and facilitates stronger trade and commercial ties, and increased economic integration between participating countries.⁴

2.3 Further, DFAT notes that Australia, as a member of the World Trade Organization (WTO), has to meet certain requirements in the design of its FTAs. These include:

- eliminate tariffs and other restrictions on 'substantially all the trade' in goods between its member countries, and
- eliminate substantially all discrimination against service suppliers from member countries (helping to increase trade in services).⁵

2.4 Australia has seven FTAs currently in force. These account for 28 per cent of Australia's trade.⁶ Australia is currently negotiating nine FTAs, including five bilateral

1 Department of Foreign Affairs and Trade, answer to questions on notice from Supplementary Estimates hearing, 21 November 2013, Question on Notice 253.

2 The Coalition's Policy for Trade, September 2013, <http://www.liberal.org.au/our-policies> (accessed 24 February 2014).

3 The Coalition's Policy for Trade, September 2013, <http://www.liberal.org.au/our-policies> (accessed 24 February 2014).

4 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

5 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

6 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

FTA negotiations. These will account for a further 45 per cent of Australia's trade.⁷ Negotiations on the Korea-Australia FTA were recently concluded, however the FTA is not yet in force.⁸

Provisions of the bill

2.5 The object of the bill is 'to encourage Australia's trading partners to ensure that workers in their country are protected by certain internationally accepted minimum standards about workers' rights'.⁹ To this end, the bill mandates that any trade agreements entered into include provisions binding each country to have in place 'minimum standards about workers' rights' and 'minimum wage fixing recommendations'. Definitions for these terms are given in clause 8 and clause 6(3) respectively and accord with the International Labour Organisation's standards. With regards to minimum standards about workers' rights, clause 8 also lists a number of international conventions.

2.6 The bill imposes a test on each potential trade agreement based on ministerial discretion. Clause 5 specifies that the Minister must be satisfied that the trade agreement includes a binding requirement to include minimum standards of workers' rights in the domestic law of countries party to the agreement. Clause 5 also prohibits the signing of any agreement which fails this test of ministerial discretion.

2.7 Clause 6, relating to minimum wage fixing, provides for a less stringent condition on the signing of trade agreements: 'the Commonwealth must endeavour to include a binding requirement' that the parties include minimum wage fixing recommendation standards in their domestic law. Unlike clause 5, should the Commonwealth fail to include a binding requirement on minimum wage fixing, there is no prohibition on signing the agreement. Clause 6, paragraph (2), stipulates that the Minister must table in Parliament a written explanation regarding why the requirement was not met.

2.8 The bill's definition of 'Trade Agreement' encompasses international agreements:

...it [Trade Agreement] is an international agreement that the Commonwealth has, or will, enter into with the government of another country, or with the governments of a group of countries, that will abolish or decrease tariffs (or other import charges) that are levied or charged by Australia at the time goods are imported into Australia.¹⁰

2.9 Given this definition, the bill would apply to FTAs, partnership agreements and other bilateral or multilateral agreements which have an element of trade. Clauses

7 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

8 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

9 *Fair Trade (Workers' Rights) Bill 2013*, Clause 3.

10 *Fair Trade (Workers' Rights) Bill 2013*, Clause 7.

5 and 6 of the bill extend the application of the bill to include both new agreements and amendments to existing agreements.

Evidence to the inquiry

2.10 A majority of submissions received by the committee support the object of the bill. The submissions in general note the benefits of mandating labour standards in trade agreements as:

- creating a level-playing field in trade by ensuring that all workers have access to the same basic wage rights and conditions;¹¹
- protecting Australian manufacturing interests;¹²
- promoting human rights;¹³ and
- assisting development and improvement of living standards.¹⁴

2.11 The Business Council of Australia submission opposes the bill:

...given the lack of identified shortcomings in Australia's current approach to considering workers' rights in trade agreements; the efficacy and flexibility of Australia's current policy; the potential for the proposed provisions to be a disguised form of protectionism; and the lack of evidence supporting the effectiveness of the proposed provisions in enhancing minimum standards for workers' rights in other countries.¹⁵

2.12 The submission supported a case-by-case approach to including labour standards in trade agreements and argued that Australia's current policy provides sufficient flexibility.¹⁶

2.13 The National Farmers' Federation (NFF) submission made a argument. It summarized the findings of the Productivity Commission's 2010 *Review of Bilateral and Regional Trade Agreements* to support its cautious approach to the bill:

The NFF supports the Productivity Commission recommendation that the government should adopt a cautious approach towards the inclusion of core labour standards in trade agreements, and should not include matters in bilateral and regional trade agreements that would serve to increase barriers

11 Home Loan Experts, *Submission 1*; Australian Fair Trade and Investment Network *Submission 2*; Australian Council of Trade Unions, *Submission 3*; Humanist Society of Victoria, *Submission 5*; CFMEU, *Submission 6*; Australian Lawyers for Human Rights, *Submission 7*; Australian Manufacturing Workers' Union, *Submission 8*; International Trade Union Confederation, *Submission 9*.

12 International Trade Union Confederation, *Submission 9*.

13 Australian Lawyers for Human Rights, *Submission 7* and Slavery Links, *Submission 12*.

14 Australian Council of Trade Unions, *Submission 3*.

15 Business Council of Australia, *Submission 4*, p. 2.

16 Business Council of Australia, *Submission 4*, p. 3.

to trade, raise costs or affect social policies without a transparent review of the implications and other options of change.¹⁷

2.14 Considering Australia's current approach to negotiating FTAs, the NFF concluded:

The NFF is of the view that current policy settings already allow provision on labour standards to be included in free trade agreements where there is a recognised need.¹⁸

Committee View

2.15 The committee appreciates the intention of the bill and commends Senator Madigan for his efforts to generate public discussion regarding workers' rights. The committee acknowledges the arguments put by all those who made submissions to the inquiry and thanks submitters for making the time to provide their views to the committee.

2.16 The committee draws to DFAT's attention the submissions received during the inquiry. The committee can see a benefit in the government giving further consideration to the issues raised in the submissions regarding inclusions in free trade negotiations.

2.17 However, the committee is not convinced that legislation is the best mechanism by which to ensure the inclusion of workers' rights and minimum wage recommendations. The committee agrees with the view of the NFF that there is no evidence of a policy failure with regard to Australia's current approach to negotiating FTAs:

NFF acknowledge that Australia has been a founding and active member of the International Labour Organisation (ILO). We are of the view that there is no evidence of a policy failure with regard to Australia's current approach to free trade agreements (FTAs) and workers' rights. In the NFFs view a more effective way of assisting developing countries to improve workers' rights may be through higher, rather than lower, trade and investment.¹⁹

2.18 The committee also notes the submission from the Business Council of Australia which argued for flexibility in the negotiation of FTAs. The committee agrees with this argument and is concerned that the proposed legislation may constrain FTA negotiations. However, the committee considers that inclusion of labour rights in FTAs is an issue worthy of further investigation.

17 National Farmers' Federation, *Submission 11*, pp. 9-10.

18 National Farmers' Federation, *Submission 11*, p. 12.

19 National Farmers' Federation, *Submission 11*, p. 5.

Recommendation 1

The committee recommends that the bill not be passed.

Senator Alan Eggleston

Chair

Dissenting Report by Senator John Madigan and Senator Peter Whish-Wilson

1.1 When the Fair Trade (Workers' Rights) Bill 2013 was introduced to the committee last year, we did not anticipate the strong level of support it would receive by relevant industry leaders both domestically and internationally. We are very grateful for all those who made submissions and we are pleased that 83 per cent of these submissions were in favour of the Bill.

1.2 We would like to contest a number of reasons purported and referenced by the committee, including:

The proposed legislation may constrain FTA negotiations

1.3 We do not believe this bill will constrain the negotiation of trade agreements. On the contrary, it will set a basis from which to begin negotiating a fair and reasonable outcome for workers both at home and abroad. These reasonable outcomes include: Freedom of Association, the right to organise and collective bargaining, freedom from discrimination, the elimination of the worst forms of child labour, the forty hour week, occupational health and safety standards, the idea of an appropriate minimum wage and weekly rest. We would like to ask the committee which of these outcomes are not fair and reasonable? Which of these internationally recognised standards does the committee not think international workers do not deserve?

There is no evidence of a policy failure with regard to Australia's current approach to FTA and workers' right

1.4 Australia's policy may not be a failure; however it is far from perfect. *Home Loan experts* write in their submission:

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.

1.5 While Australia is only one market for these "shoddy" companies, we have a strong record in the area of workers' rights. This bill provides a strong opportunity for Australia to lead by example on the global stage.

1.6 The *Australian Council of Trade Unions* supported these ideas in their statement that:

We strongly believe the primary objective of all trade negotiations should be to raise living standards and make a positive difference in the lives of working people in accordance with principles of sustainable development. Reducing barriers to trade and investment, and increasing economic cooperation and integration, are possible means of achieving this.

1.7 The peak body of Australian vegetable and potato growers, *AUSVEG* believes that "it is a reasonable expectation that trading nations should observe and implement

these [the bill's] standards.” The Australian Lawyers for Human Rights provides further reason in that:

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.

1.8 The *International Trade Union Confederation* sentiments also align with ALHR's and most contributors to the inquiry, stating:

This Bill creates a legal framework for such conditionality and it aims at achieving a more inclusive trade where all those involved in the production and distribution of goods and services capture a fair share of trade's gains. Australia will not be the first country to make the inclusion of conditionality obligatory for trade agreements. The two parties of the US Congress concluded an agreement in May 2007 that enforceable conditions on labour and environment are to be part of all trade agreements negotiated by the US.

Conclusion

1.9 In Summary, the Fair Trade (Workers' Rights) Bill 2013 has three strong pillars which make it a reputable piece of legislation. These are outlined by Slavery Link's submission:

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

Recommendation

We believe the Senate should vote in favour of this piece of legislation.

John Madigan
Democratic Labour Party
Senator for Victoria

Peter Whish-Wilson
Australian Greens
Senator for Tasmania

Dissenting Report by Senator Nick Xenophon

1.1 I would like to take this opportunity to indicate my support for the intent of the *Fair Trade (Workers' Right) Bill 2013*. I believe it is vitally important that Australia consider minimum workplace standards in trade negotiations, both from a human rights and industry standpoint.

1.2 Australia has long been a world leader in terms of workplace rights. The horror and public outcry that followed the collapse of a factory building in Bangladesh last year, where 1,138 people died and over 2,000 were injured, has demonstrated the Australian public's desire to see retailer and importers take a more responsible and humane approach to sourcing their products.

1.3 Given the committee's stance on the bill, I believe there may be scope for further amendments to achieve similar aims through domestic law. I believe the intent of the bill should be supported, and that the Government should work with Senator Madigan to achieve these aims.

Nick Xenophon

Independent

Senator for South Australia

Appendix 1

Public submissions

- 1 Home Loan Experts
- 2 Australian Fair Trade and Investment Network (AFTINET)
- 3 Australian Council of Trade Unions (ACTU)
- 4 Business Council of Australia (BCA)
- 5 Humanist Society of Victoria
- 6 Construction, Forestry, Mining and Energy Union of Australia (CFMEU)
- 7 Australian Lawyers for Human Rights (ALHR)
- 8 Australian Manufacturing Workers' Union (AMWU)
- 9 International Trade Union Confederation (ITUC)
- 10 AUSVEG
- 11 National Farmers' Federation (NFF)
- 12 Slavery Links

