

SlaveryLinks Australia Inc

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Competition Policy Review Secretariat

The Treasury

Langton Crescent

Parkes ACT 2600

Dear Chair and Members

Competition Policy and Modern Slavery

Thank you for inviting Slavery Links Australia Inc to participate in the review.

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 43 pages of analysis of how the international conventions of the United Nations (UN) and International Labour Organisation (ILO) intersect with modern day slavery.

2. Areas of focus for the Review

This Submission responds to the key areas of focus for the review which were advertised as follows:

- a) identify regulations and other impediments across the economy that restrict competition and reduce productivity, which are not in the broader public interest;
- b) examine the competition provisions of the Competition and Consumer Act 2010 (CCA) to ensure that they are driving efficient, competitive and durable outcomes, particularly in light of changes to the Australian economy in recent decades and its increased integration into global markets;
- c) examine the competition provisions and the special protections for small business in the CCA to ensure that efficient businesses, both big and small, can compete effectively and have incentives to invest and innovate for the future;
- d) consider whether the structure and powers of the competition institutions remain appropriate, in light of ongoing changes in the economy and the desire to reduce the regulatory impost on business; and
- e) review government involvement in markets through government business enterprises, direct ownership of assets and the competitive neutrality policy, with a view to reducing government involvement where there is no longer a clear public interest

3. How the problem of slavery re-frames the Terms of Reference

Australia signed the Slavery Convention 1926, which referred to slavery and systems of forced labour.¹ Australia was also one of the first signatories of the Supplementary Convention 1956. This obliged Australia also to address systems of child trading, debt bondage, forced marriage, peonage and other slavery like practices.² The Criminal Code (Cth) creates slavery offences in Division 270.

Slavery is a crime against humanity and Australian citizens, business and governments are required not to engage in it. Because slavery is a crime, each sovereign state is required to act according to law. The logic of market forces and the market state cannot deal with slavery.

There are estimated to be 27 million slaves in the world today, many of them in the Asia Pacific, in countries where Australia has trading and labour relations. Slaves are the most vulnerable and excluded people in the world. They are in effect owned, they cannot choose. The concept of a free market does not apply to transactions involving slaves.

Businesses who allow slavery into their supply chains are engaging in uncompetitive behaviour and subject to the Review's first reference:

- Reference 1.1 No participant in the market should be able to engage in anti-competitive conduct against the public interest within that market and its broader value chain

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Slavery in supply chains needs to be addressed in order to realise fair, transparent and open competition. Slaves are not productive, in the sense that zero labour cost provides no incentive to invest in other factors of production. Removing slavery from supply chains will promote wage growth in Australia's trading partners and thereby protect Australia's working conditions with mutual benefit for each partner's standards of living. Therefore slavery relates to the next part of the Review's first reference:

- Reference 1.2. Productivity boosting microeconomic reform should be identified, centred on the realisation of fair, transparent and open competition that drives productivity, stronger real wage growth and higher standards of living;

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Slavery is a question of law and law enforcement. Slavery requires regulatory and police actions that can only be taken by government. This is not a matter of choosing an economic ideology or practice. Where slavery is concerned, the review's terms of reference can be re-framed:

- Reference 1.3 Markets cannot function effectively and it is necessary for government to be a substitute for the private sector

¹ The text of the Slavery Convention 1926 can be found at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

² United Nations, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956. Go to:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

In this context regulation is not a burden. All it does is to identify hidden costs and bring them to account. Again, the review's terms of reference can be re-framed:

- Reference 1.4. The need to be mindful that regulation is not a burden on business but assists to clarify the costs and benefits of compliance with international and local law

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Reference 3 refers to increasing globalisation and developments in international markets, changing market and social structures. Businesses are exposed to slavery. It is in the interests of all parties for business to avoid anti-competitive non-transparent illegal behaviour and the reputational risks arising from that. The problem is bigger than any one business can deal with. Reference 3 can therefore be re-framed as follows:

- Reference 3. When slavery is taken into account, regulation and enforcement by government will tend to *reduce* business compliance costs, not add to them.

*

In the following discussion of the global economy, this submission has referred to products and industries including seafood, fruit, vegetables and garments. This refers to Reference 4 as follows:

- Reference 4.2. examine whether key markets ... are competitive and whether changes to the scope of the CCA and related laws are necessary to enhance consumer, producer, supplier and retailer opportunities in those markets and their broader value chains

In the submission of Slavery Links there are grounds for special consideration of the seafood fruit, vegetable and garment markets, to rid supply chains of slavery and thereby to address Reference 4.2

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We now turn to the question of competitive neutrality, as set out in Reference 5. In this submission, the objective of the competitive neutrality policy is to remove competitive advantages and disadvantages that arise solely through the ownership differences between public sector and private sector organisations.

In the submission of Slavery Links, the management of supply chains is beyond the capacity of any purchasing officer or business. There are grounds for special action by governments to lead the way, to work out what can be done and how. Such action will serve the public interest and thereby address Reference 5:

- Reference 5. The Review Panel should also examine whether government business activities and service providers serve the public interest and promote competition and productivity, including consideration of ... competitive neutrality policy.

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4. Focus area (b) The global economy

In a global economy, Australia is exposed to slave-making systems, which have persisted in the Asia Pacific for many generations. Whether Australia imports temporary migrant labour or outsources manufacturing there is a risk of exposure to slavery-like practices.

a) Temporary migrant labour in Australia

Examples can be found where migrant workers on temporary Visas have been exposed to slavery-like practices in Australia. In 2012 Slavery Links provided a paper for the Conference of the Australian Institute of Judicial Administration³ indicating that such cases may have come before the lower courts as workplace relations or occupational health matters, where the slavery component was not identified or addressed. A summary of the paper has been sent to the Secretariat to be considered as an exhibit if the Committee wishes.

b) Imports from countries where slave systems exist

Unregulated competition increases the possibility of importing slave-tainted products. Russell Corporation damaged children, its business and the reputation of football when it outsourced manufacturing and imported Sherrin footballs, tainted with child labour.

Overseas labour standards cannot be assumed to meet international standards. There have been local agreements to regulate labour standards for selected goods, such as garments from Bangladesh.⁴ However in April 2014 ABC News reported that one year after the Rana Mall building collapse in Bangladesh, two Australian retailers of garments imported from Bangladesh had not signed on.⁵

In the submission of Slavery Links, this experience shows that voluntary schemes cannot protect business from being exposed to slavery, cannot rid the market of this sort of uncompetitive behaviour. Government regulation and action are required and will have the effect of *reducing* the costs of doing business in the region.

Further, local businesses have been affected because Australian supply chains have in effect been unregulated and open to contamination from products produced by trafficked and or slave labour. This has included prawn and or fish products from Thailand, where production has used trafficked labour and caused environmental degradation.⁶

³ Roscoe Howell and Robert Evans (2012) How the Court system might encounter forms of slavery in Australia, Paper presented to the Conference - Issues and Challenges for Judicial Administration in Australia and New Zealand. 23-24 August 2012, Brisbane

⁴ For example

- The Alliance for Bangladesh Worker Safety. Go to: <http://www.bangladeshworkersafety.org/>
- The Accord on Fire and Building Safety in Bangladesh. Go to: <http://www.bangladeshaccord.org/>

⁵ ABC News (2014) Rana Plaza factory collapse: Australian clothing retailers yet to sign Bangladesh safety accord
Go to: <http://www.abc.net.au/news/2014-04-24/australian-clothing-retailers-yet-to-sign-factory-safety-accord/5408028>

⁶ Daily Mail newspaper (2013) Love eating prawns? You'll go right off them after we tell you what THEY are fed on', Jim Wickens, 16 March. Go to: <http://www.dailymail.co.uk/health/article-2294246/Love-eating-prawns-Youll-right-tell-THEY-fed-on.html>

In 2013 the problems in Thailand were found to extend beyond seafood to the fruit, vegetable and garment industries, each of which export product to Australian families' food through the retail sector.⁷

c) Export of Australian products

It is in Australia's interests to encourage our 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, 2011.⁸ 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 ...*"

Action to be taken regarding Focus area (b)

In the submission of Slavery Links, it is essential that domestic competition policy be developed in context of

- Accurate information regarding the exposure of temporary migrant labour in Australia to slavery-like practices. The Review is requested to recommend that research projects be funded through the Courts, through employer groups and through legal professional bodies such as the Law Institute or Bar Associations, to identify cases and case histories of people affected.
- Policy and action to ensure that Australian supply chains are not contaminated with slavery. Such action is beyond the capacity of individual firms. Regulation and intervention by government is required and will reduce the costs of doing business.
- Policy and action to ensure that Australia's trading partners commit to and uphold basic labour standards as articulated by the International Labour Organisation and legislate to implement the Supplementary Convention 1956.

END

⁷ [The Nation](http://www.nationmultimedia.com/business/Australian-minister-urged-to-end-modern-slavery-in-30200536.html) news (2013) 'Australian minister urged to end modern slavery in Thailand', 21 February. Go to: <http://www.nationmultimedia.com/business/Australian-minister-urged-to-end-modern-slavery-in-30200536.html>

⁸ 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