Inquiry into the Customs Amendment (Preventing Child Labour) Bill 2023

Senate Legal and Constitutional Affairs Legislation Committee

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We would like to thank you for providing us with the opportunity to comment on the proposal to amend the Customs Act 1901a, hereafter referred to as 'the Act', to include a provision that will prohibit an importer from importing goods into Australia if there are grounds to believe they have imported, are importing, or are planning to, import goods involving child labour.

Our backgrounds

Dr Katherine Christ and Professor Roger Burritt are business academics located within the University of South Australia and the Australian National University, respectively. Both Dr Christ and Professor Burritt are internationally recognised as experts on accounting for modern slavery risk. For example, in the UK context, Dr Christ was nominated in 2021 for a Themis Financial Crime Prevention Award in the category of Combatting Modern Slavery. Although we recognize that modern slavery is a complicated issue that extends to many sections of society, as business academics our comments are largely limited to the business-related aspects of the Act.

Comments on the proposed Act

1. **Focus is too broad**. We appreciate and acknowledge the rationale for the proposed Act as described in the explanatory memorandum. Certainly, there is a need to break the poverty cycle in less well-developed countries and education can form an important part of this agenda. It is true that in cases of child slavery there is no contribution to the household, but for children in paid work, while they may only make a small contribution, this is often crucial in terms of supporting the household especially in countries where there is no form of social support from the government. Care must be taken to ensure there are no unintended consequences from the passing of this Bill. Although it is stated in the explanatory memorandum that for "Villages and regions [that] rely on child labour for a meagre income, removing that income in the name of fighting child labour could be counterproductive", simply providing a 48-month window between non-compliance with notice and a full ban will achieve little if anything. Although importers may work with suppliers to eliminate child labour, if the village or region is reliant on this meagre income it is likely that all a ban will achieve is to force these children into work elsewhere or push the issue underground into illegal settings. This may involve child prostitution, scavenging rubbish dumps or individuals having to move into extreme forms of child labour. We feel there is a fallacy within this legislation in which the reality within some developing nations is not fully recognized. Banning goods made with child labour will not automatically result in increased educational engagement. To suggest otherwise is to grossly underestimate the nature of child labour and the socioeconomic realities in other countries.

   Emphasis on the broad notion of child labour also misses the opportunity to address the narrower focus on ending extreme forms of child labour, as targeted by the United Nations Sustainable Development Goal 8.7. Ending extreme forms of child labour deserves targeted legislation as it is to be abhorred when such labour is embedded in products and services that are imported into Australia. Extreme forms of child labour where punishment and violence occur and education is circumvented should be banned, whether at home or overseas, and this should be the focus of the legislation in order to avoid unintended consequences that create an even larger poverty trap by pushing child labour further into the shadows.

2. **Unreasonable expectation of information available to businesses**. We feel that businesses importing goods are unlikely to be able to access information about the educational arrangements for all

children in foreign countries and whether such labour is embedded in the myriad of components and services purchased and brought together in final products. Also, the draft Act excludes packaging on just these grounds when the explanatory memorandum states: "The bill specifically exempts packaging. This decision was taken for practicality. It is fair to require an importer to know where their materials came from, and who made their product. Beyond that it would be impractical to police." There is much about the broad definition of use of child labour which appears impossible to police – but this should not be the case where extreme forms of child labour trapped in modern slavery are concerned.

3. **Tighten up definitions with existing practices and standards.** Businesses have guidance from voluntary sustainability standards as to how they might report on child labour in their supply chains. Foremost among these is Global Reporting Initiative's "GRI 408 Child Labour 2016". There a child is defined as "person under the age of 15 years, or under the age of completion of compulsory schooling, whichever is higher". The complex proposed definition in the Act is that child labour occurs "where an individual is under 14 years of age performs work in a foreign country and (if there is compulsory schooling and a minimum age for ceasing compulsory schooling in that foreign country) the individual is under that minimum age and absent from that compulsory schooling as a result of carrying out the work." As the GRI voluntary standard is the most widely accepted by business the different proposed definition in the Act means that unnecessary changes to existing data gathering will be imposed by reducing the age of a child by one year for the new purpose. Indeed, ILO Convention 138 stipulates that "national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received", so the choice of "under 14 years of age" seems arbitrary at best. The government will need to work with such groups as the GRI to see whether they can change what is an internationally accepted definition used by businesses, based on the ILO's definition. In addition, the proposed definition of a child provides no guidance as to what defines absence from compulsory schooling. Is it a day, a week, or a different period of time? Given the absences from compulsory schooling of many children in Australia (and other developed countries) it seems wrong to hold children to a higher standard in developing countries. Furthermore, by default the Act leaves young people between the ages of 14-18 as adults out of consideration, but these are some of the most vulnerable people open to modern slavery. For example, in Nigeria alone the median age of the population of 226 million is 18 years with 43% under the age of 15. The minimum age for hazardous work, such as working in artisanal mines, is 18 years for all countries and protection is needed against such work that is "likely to harm the health, safety or morals of children" (Hazardous child labor as defined by Article 3 (d) of ILO Convention 182 'Worst Forms of Child Labour Convention'). The vulnerable position of young adults in developing countries should be considered in this legislation as the problem of modern slavery is not just about minimal education of young people in developing countries, but also about these broader issues. Australia should demonstrate that it cares about these young workers too.

4. **Ending extreme forms of child labour should be an absolute standard**. While we agree that removing income "in the name of fighting child labour could be counterproductive", in some circumstances market activities that are based on extreme forms of child labour should be ended with immediate effect following their discovery. It seems unethical to suggest that giving suppliers time to change

their practices, "allows ethical suppliers to ramp up production to meet additional demand". A focus on banning extreme forms of child labour would make it clear that this is an absolute standard, not a relative one. Rather than saying "Having access to cheap electronics, clothing and coffee (as examples) should not come at the cost of children in other countries being sentenced to a life of physical hardship and poverty" it would be more in line with international human rights legislation to argue that "Having access to cheap electronics, clothing and coffee (as examples) should not come at the cost of children in other countries being sentenced to a *single day* of physical hardship and poverty."

5. **Packaging should be included**. The explanatory memorandum states "The bill specifically exempts packaging. This decision was taken for practicality." Examples are given of children working on assembly lines or in textile factories as being covered. Nevertheless, packaging has a pervasive presence in society and where children are used to operate packaging machines, are open to lung disease from cardboard and plastics they cover products without masks, etc., packaging and unpackaging can have a terrible health effect on their lives. Our argument is that when extreme forms of child labour are used for these purposes, this should be included in the scope of the Act.

6. **Avoid a culture of relying on parties "spilling the beans" about use of child labour**. The explanatory memorandum explains: "The bill operates by exception. This means most importers will not have cause to review their supply chain." Such techniques were heavily relied upon in communist countries, such as those used in the USSR and by East Germany's Stasi, but should not be an approach to business that we encourage be applied in developing countries. If the exception is to be revealed by NGOs ["There are multiple organisations who track goods involving child labour"] and snitches to government then cover-ups will be encouraged and greenwashing may ensue. Far better to encourage ethical behaviour by all the parties involved in the supply chain. Given the Australian Modern Slavery Act 2018 (Cth) requires large companies to understand and report on the modern slavery risks that exist in their operations and supply chains it may be confusing to then have a different Act where such action is the exception and not the rule. Furthermore, although NGOs and related organisations are named as being in the best position to notify Border Force of suspect goods, the responsibility for remedial action is then handed to the importer. It should also be recognized that in many cases suppliers will provide goods to more than one importer. Is it then the responsibility of all importers associated with the supplier to take action or just one? If multiple importers are forced to work together to combat an issue with a single supplier, the government will need to provide guidance on how they can avoid accusations of operating as a cartel in this situation. Building on this point, an Act that operates by exception would need to include strict transparency requirements so that organisations named as potentially importing goods made with child labour know who is making the accusation and the nature of the evidence provided to support that position.

7. **Standard of evidence.** As it currently stands, the explanatory memorandum and potential Act are largely silent when it comes to the standard of evidence that needs to be provided to demonstrate that a particular good is 'suspect'. This is an extremely important point because without such a standard companies and the authorities, including but not limited to Border Force, may end up 'chasing shadows' which has potential to distract from cases of extreme child labour which should be addressed as a matter of priority.

8. **Incentives as well as penalties**. The present proposed Act seems to provide no positive incentive for businesses to do the right thing in relation to child labour. It aims to impose penalties and naming and

shaming (Section 57D) for doing the wrong thing. This could be complemented with a positive incentive scheme to "name and fame" leaders having good practice disclosures about due diligence over child labour in supply chains in developing countries. Cross-connection with the Modern Slavery Act (2018) (Cth) could be encouraged.

9. **Improving education and reducing poverty in developing countries**. The Act seeks to stop child labour through the banning of imported goods which have child labour embedded in them. The focus is on changing behaviour of the importer. It needs to also consider how the behaviour of suppliers from developing countries can be influenced, how educational facilities can be improved in developing countries and how children in extreme forms of child labour can be protected when such goods are seized or banned. Transparency about and remedy for children affected by child labour needs serious consideration. This is a cross-Departmental issue and also may need specific soft law paths for non-government organisations to be encouraged.

With regards,

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