



**Australian Government**  
**Department of Home Affairs**



# **Department of Home Affairs submission to the Inquiry into the Preventing Child Labour Bill 2023**

Senate Legal and Constitutional Affairs Legislation  
Committee

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## Introduction

The ABF plays a crucial role in managing the movement of goods across our border by balancing the needs of facilitating legitimate trade while protecting Australia from illicit goods such as drugs, weapons and counterfeit products.

This submission addresses the proposed amendments to the *Customs Act 1901* in the *Customs Amendment (Preventing Child Labour) Bill 2023* (the Bill). This submission outlines the ABF's position on the viability and effectiveness of using Customs legislation for the purpose of prohibiting the import of goods that may have been made with child labour. This submission also includes additional context from the Department of Employment and Workplace Relations (child labour), the Department of Foreign Affairs and Trade (international obligations and engagement), and the Attorney-General's Department (worst forms of child labour).

## Customs Amendment (Preventing Child Labour) Bill 2023

### Use of Customs Legislation to regulate child labour goods

Just as with forced labour goods, child labour goods of the kind proposed by the Bill must be identifiable at the border for a prohibition to be enforceable. There are significant practical, administrative and enforcement challenges of achieving the Bill's intent through the proposed prohibition. In the current legislative and policy framework, supported by intelligence, IT systems and operational activities, effective enforcement is not possible to the level for which any *Customs Act 1901* amendment would require.

Australia's border systems and processes for identifying imported goods are not able to automatically and reliably determine processes or labour standards applied in the manufacture of imported goods due in large part to the complexity of modern day supply chains. This includes manufacturing occurring in various stages and locations, combining components from different origins, producers, and production methods to create a single finished product. The ABF obtains relevant objective details of imported goods – including description, origin, value and tariff classification – to enable the accurate identification of the goods for customs purposes. The ABF also conducts physical interventions on consignments of goods at the border to confirm the nature of the goods and inform any decision to detain them. Physical intervention relies on ABF officers screening, inspecting or testing the goods to positively identify their contents and characteristics. These processes apply to the imported goods as they appear at the border, and they are not able to determine conditions of labour that may have applied in their manufacture.

Where an ABF officer suspects on reasonable grounds that an imported good is in breach of an import prohibition, the ABF may seize the offending goods, though the importer can then claim the return of the goods within 30 days. The goods must be returned to the owner unless legal action is taken by the ABF, such as a prosecution for importing prohibited imports, or an action to condemn the goods. In any such legal action, the onus is on the ABF to prove that the goods fall within the scope of an import prohibition or the defendant will succeed. The defendant does not have to prove that the goods are not prohibited imports.

Enforcing the proposed prohibition on the importation of goods made wholly or in part with child labour would require the Commonwealth to establish specific capability to identify such items offshore through new intelligence and investigative functions, and to manage the complex notification process proposed by the Bill. This would include development of a mechanism to receive evidence from the public that a good was produced with child labour, and a new penalty regime. As mentioned above, the current settings do not provide for this, and obtaining such an ability would require a complete and long term overhaul of the current regulatory framework and supporting IT systems, just to capture the small percentage of child labour goods that members of the public could report on and meet the appropriate evidentiary standard for to merit a seizure. This system transformation would be disruptive, time intensive and expensive, and would require extensive scoping and consultation domestically and internationally, and it is highly unlikely the Commonwealth would be able to reliably meet such a standard for most imported goods. For this reason, and all the issues raised above, the intended outcome of the proposed prohibition would not be met.

## Application to child labour

The Bill's proposed import prohibition applies to all goods produced or manufactured through the use of "child labour", defining the term by reference to the ILO's *Convention concerning Minimum Age for Admission to Employment*.

Child labour occurs where an individual who 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. A child under the age of 14 may work if their age is above the minimum age for compulsory school in their country.<sup>1</sup>

Each scenario would require consideration of varying factors such as the age of a child, the type of labour they are undertaking, the conditions of employment, and how child labour is used in business operations.

## Application to imported goods

The Bill's proposed import prohibition applies only to goods being imported into Australia and targets importers, rather than overseas entities engaging in child labour practices.

The Bill does not apply to child labour practices within the production and retail of goods outside Australia, including in situations where these goods are produced or sold by Australian companies.

## International obligations

Any amendments to the *Customs Act 1901* would need to consider Australia's international trade and investment law obligations.

Australia actively pursues the inclusion of labour in new free trade agreements (FTAs) and upgrades of existing FTAs, taking into account the preferences of our negotiating partners. Five of Australia's 18 FTAs in force contain labour chapters, including references to the ILO Declaration on Fundamental Principles and Rights at Work. Australia is also advocating for strong labour provisions under the Indo-Pacific Economic Framework.

The Government notes that there are a range of international treaties that may be engaged should this Bill be enacted. These treaties include bilateral, regional, plurilateral and multilateral trade agreements, such as the World Trade Organization (WTO) Agreement on Tariffs and Trade, the WTO Agreement on Government Procurement and Australia's FTAs.

## Child labour

A child taking up work can be an opportunity to gain a work ethic and contribute to the community, for example delivering newspapers or volunteer work. However, child labour must not come at the cost of a child's education and wellbeing. Australia is committed to ensuring children are not involved in hazardous work and other worst forms of child labour contrary to international law.

Australia has ratified the *International Labour Organization's Worst Forms of Child Labour Convention (No. 182)* and *Minimum Age Convention (No. 138)* and encourages other countries to do the same.

Alarming, child labour is on the rise globally, with 160 million children engaged in work and 80 million in hazardous work (see below). Recognising the setbacks caused by the COVID-19 pandemic and other humanitarian crises, the 2022 Global Conference on the Elimination of Child Labour, in which Australia participated, stressed the need for urgent global action to end child labour.

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<sup>1</sup> Explanatory Memorandum for the Customs Amendment (Preventing Child Labour) Bill 2023, page 2.

## Child labour in Australia

In Australia, children are permitted to work in certain circumstances. However, the Australian Government believes a child's quality education must be prioritised. If a child does work, states and territories implement a combination of education, employment and workplace health and safety laws to ensure that the work is safe and appropriate for their age, and it does not affect their education.

The minimum age for employment in Australia differs in each state and territory. Generally speaking, the minimum age for admission to full-time employment in Australia is the time when a child ceases to be of compulsory school age. The age when a child ceases to be of compulsory school-age differs between states and territories, but is generally at least 15 years.

## Child labour internationally

The ILO's latest global estimates indicate that 160 million children – 63 million girls and 97 million boys – are involved in child labour, accounting for almost 1 in 10 children worldwide.<sup>2</sup> Of those children, 80 million were in hazardous work that directly endangers their health, safety and moral development.<sup>3</sup>

Child labour is a significant issue in the Asia-Pacific region, where the ILO estimates there are 48.7 million child labourers with 33.9 million in hazardous work.<sup>4</sup>

Australia is committed to promoting the ILO's fundamental principles and rights at work, which include the effective abolition of illegal child labour. To that end, Australia has ratified the:

- *Minimum Age Convention, 1973*
- *Worst Forms of Child Labour Convention, 1999*
- *Forced Labour Convention, 1930*
- *Protocol of 2014 to the Forced Labour Convention, 1930*
- *Abolition of Forced Labour Convention, 1957*

Ratification of ILO Conventions is an important demonstration of our commitment to protecting and promoting the rules and norms consistent with Australia's interests and values.

Australia advocates at the ILO to encourage the ratification and implementation of ILO Conventions and action on child labour. The Australian Government promotes international labour standards at the ILO, through meetings with foreign counterparts and emphasises the importance of international labour standards in trade agreements. In our region, Australia has funded a project by the ILO Pacific Office aimed at improving the implementation of labour standards in Pacific countries.

## Worst forms of child labour

Article 3 of the ILO *Worst Forms of Child Labour Convention, 1999* defines the worst forms of child labour as:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

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<sup>2</sup> [Report: Child Labour: Global estimates 2020, trends and the road forward \(ilo.org\)](#). Note that ILO releases new data and trends report every 4 years, meaning we can expect the next update version in June 2024.

<sup>3</sup> Note that per the above report at page 19: "Hazardous work by children is often treated as a proxy category for the worst forms of child labour for two reasons. First, reliable national data on the worst forms of child labour other than hazardous work, such as children in bonded and forced labour or in commercial sexual exploitation, are still difficult to find. Second, children in hazardous work account for the overwhelming majority of those in the worst forms of child labour."

<sup>4</sup> [World Day Against Child Labour: To bring social justice to all we must end child labour \(ilo.org\)](#)

- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

### **Australia's criminal laws**

Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) criminalise human trafficking, slavery and slavery-like practices in Australia. Slavery-like practices include servitude, forced labour, forced marriage, deceptive recruiting and debt bondage. These crimes are serious violations of human rights and deprive victims and survivors of fundamental freedoms.

The slavery offences in Division 270 have universal jurisdiction and apply to conduct within or outside Australia, and whether or not the offender is an Australian citizen, resident or body corporate. The slavery-like offences in Division 270 have extended geographical jurisdiction and can apply where the offending occurred wholly or partly in Australia, or where the conduct occurred wholly outside Australia but the offender was an Australian citizen, resident or body corporate. The trafficking offences in Division 271 include offences specific to trafficking in children (carrying a penalties of up to 25 years) and the offences for slavery-like practices in Division 270 carry aggravated penalties for offences against children (ranging from 7 years for debt bondage to 20 years for servitude).

State and territory criminal laws include child sexual abuse offences, and set an age of consent for sexual activities. The *Criminal Code Act 1995* (Cth) also includes offences for child sexual abuse committed via a carriage service (such as a mobile phone or the Internet) or postal service, as well as offences that are committed outside Australia by an Australian citizen or permanent resident. It is against Commonwealth criminal and customs laws to import or export child abuse material, or to import or possess a childlike sex doll. The Criminal Code also restricts certain registered child sex offenders' ability to leave Australia without permission.

### **Modern Slavery Act 2018**

The *Modern Slavery Act 2018* (the Act) entered into force on 1 January 2019. The Act aims to combat modern slavery in the global supply chains of Australian goods and services by increasing supply chain transparency. It defines "modern slavery" to include the worst forms of child labour as defined in the ILO *Worst Forms of Child Labour Convention, 1999*.

The Act requires large entities operating in the Australian market with over AU\$100 million annual consolidated revenue to prepare annual modern slavery statements (statements) setting out their actions to assess and address modern slavery risks in their global operations and supply chains.

To support understanding of modern slavery risks and compliance with the Act, the Government actively undertakes outreach to Australian entities on risks related to modern slavery and supply chains. Agencies, including the Attorney-General's Department and the Department of Foreign Affairs and Trade, engage closely with peak bodies and individual businesses, both in Australia and overseas, as well as officials from state and territory governments to raise awareness of relevant supply chain risks.

The Government encourages Australian companies and institutions to conduct appropriate due diligence, specific to their industries, to satisfy themselves that their commercial and other arrangements are consistent with Australian legislation and international standards.

The Government is committed to strengthening the Act. Following a recent statutory review of the operation of the Act, the Government is carefully considering the 30 recommendations from the review report and will respond to the review in 2024.

## **National Action Plan to Combat Modern Slavery 2020-25**

The Australian Government has a holistic national response to modern slavery at home and abroad, guided by the *National Action Plan to Combat Modern Slavery 2020-25* (the National Action Plan). The National Action Plan describes 'modern slavery' in Australia as referring to a range of serious exploitative practices, including trafficking in persons, slavery, slavery-like practices, and the worst forms of child labour.

### **International engagement**

The Australian Government has appointed an Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking and works closely with international partners to help build awareness and strengthen responses to modern slavery, including forced and child labour. Australia is also working to address these issues through the Bali Process on People Smuggling, Human Trafficking and related Transnational Crime.

Australia plays a leadership role in Alliance 8.7, a global initiative focused on progressing UN Sustainable Development Goal 8 (Target 8.7). Alliance 8.7 encourages countries to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers.