



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

APRIL 2024

The information set out in this submission is not intended as, and does not constitute, legal advice.

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**SUBMISSION TO THE AUSTRALIAN SENATE LEGAL AND CONSTITUTIONAL AFFAIRS
COMMITTEE'S CONSULTATION PROCESS TO INFORM THE CUSTOMS AMENDMENT
(PREVENTING CHILD LABOUR) BILL 2023**

Dear Ms Dunstone

We are pleased to provide this submission to support the Australian Parliament's consideration of the Customs Amendment (Preventing Child Labour) Bill 2023 (the bill).

The analysis and recommendations set out in this submission address selected elements of the bill introduced to Parliament on 29 November 2023. This submission draws on our extensive experience working with businesses, investors, government and other stakeholders to implement global business and human rights standards, including relevant Australian legislation such as the *Modern Slavery Act 2018* (Cth). It also reflects insights from our team members' prior experience working in the Australian Government, including on child labour-related policy matters.

We trust this submission will assist the Committee in its inquiry into the bill and we thank you for the opportunity to contribute to these timely discussions. We would be pleased to engage with the Committee further as appropriate, including to discuss this submission.

Warm regards

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About Pillar Two

[Pillar Two](#) is a specialist business and human rights advisory firm with extensive global experience supporting businesses and other organisations to identify, assess and develop effective responses to their human rights risks, and to meaningfully engage stakeholders around their human rights approaches. We take a principled, integrated and practical approach founded on international frameworks, national laws and policies, evolving stakeholder expectations, and leading practice.

We advise companies across multiple sectors, including mining, energy, technology and telecommunications, education, retail, food and beverage, tourism and transport, fashion, professional services, infrastructure, banking and property. This submission draws on our extensive experience working with Australian and global organisations to identify, assess and develop effective responses to their human rights risks, and to meaningfully engage stakeholders around their human rights approaches, including their reporting under the Australian and United Kingdom Modern Slavery Acts.

Our team has deep business and human rights expertise and is based across Australia, Asia Europe and North America. Our CEO was a member of the team that drafted the [UN Guiding Principles on Business and Human Rights](#) (UNGPs),¹ and is Chair of Human Rights at the UN Global Compact Network Australia. She has been appointed to several Australian Government expert advisory groups including the Modern Slavery Expert Advisory Group (representing the Institute for Human Rights and Business), the National Roundtable on Human Trafficking and Slavery (representing the Law Council of Australia) and the Governance and Advisory Board to the Australian National Contact Point under the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct, amongst other advisory roles. Our team also includes former Australian Government officials closely involved in the development, implementation, and review of the *Modern Slavery Act 2018* (Cth) (MSA) and the broader operation of the Australian Government's modern slavery response.

¹ The UNGPs are the authoritative global standard for addressing and preventing business-related adverse human rights impacts, which could include child labour. The Australian Government co-sponsored the resolution leading to the adoption of the UNGPs by the UN Human Rights Council in 2011 and has agreed to implement them.

Introduction

Globally, the International Labour Organization [estimates](#) 160 million children are engaged in child labour. Given the nature and extent of child labour, we support the Parliament taking steps to consider potential legislative options to address this issue, including child labour occurring in businesses' operations and supply chains.

We consider more information about how the Customs Amendment (Preventing Child Labour) Bill 2023 (the bill) might operate in practice is required and that consultation with relevant stakeholders (including businesses) will be important to ensure any legislative steps are fit for purpose. While we reserve our position on the bill, we welcome the opportunity to contribute to discussions on this topic.

This submission addresses:

- **Domestic and international context:** This section outlines Australia's current domestic approach to addressing child labour in businesses' operations and supply chains and identifies relevant legal frameworks from other jurisdictions.
- **Scope and content of the bill:** This section discusses potential challenges in implementing the measures set out in the bill, including the scope of the proposed legislation, how it might be enforced, and the importance of providing support for businesses.

Domestic and international context

Businesses' responsibility to respect human rights

All businesses, including importers, have an internationally recognised responsibility to respect human rights. This responsibility is set out in the UNGPs, which are the authoritative global standard for addressing and preventing business-related adverse human rights impacts. Unanimously endorsed by the Human Rights Council in 2011, the UNGPs are supported by Australia and other international governments. Importantly, the UNGPs have informed the development of relevant legislation globally and here in Australia, including the MSA.

We encourage the Parliament to consider how the UNGPs might inform the development and implementation of any legislation to address child labour (and potentially broader modern slavery) risks associated with the importation of products into Australia. For example, the expectations around human rights due diligence² set out in the UNGPs could inform the types of actions the Government might require from importers to show goods are not made with child labour.

Australia's approach to date

Australia has taken a number of steps to address child labour in businesses' operations and supply chains. In 2006, Australia [ratified](#) the ILO Worst Forms of Child Labour Convention which aims to protect children from the most severe forms of child labour such as slavery, prostitution and drug trafficking. Australia also [ratified](#) the ILO Minimum Age Convention in June 2023. Notably, the MSA also requires certain large companies and other entities to report annually on their actions to identify, assess and address modern slavery risks, which includes the worst forms of child labour. 'Child labour' is mentioned in over 5,300 modern slavery statements lodged on the Government's online [Modern Slavery Statement Register](#).

We note the Australian Government and the Parliament have also previously considered potential restrictions on the importation of goods at risk of being made using child labour and other forms of modern slavery.³ For example, the [Customs Amendment \(Banning Goods Produced By Forced Labour\) Bill 2021](#) successfully passed the Senate in August 2021. The 2017 [parliamentary inquiry](#) into establishing a Modern Slavery Act in Australia also recommended the Australian Government consider 'importation restrictions' to address modern slavery risks in supply chains. In both cases, these initiatives were informed by evolving practice internationally, including the examples described below.

² Human rights due diligence is the process businesses should follow to identify, prevent, mitigate and account for how they address their adverse human rights impacts.

³ The MSA defines modern slavery as including the worst forms of child labour but not child labour more broadly.

International approaches

Internationally, a number of jurisdictions have implemented or are working to implement import restrictions related to forced labour (a form of modern slavery). In some cases, these frameworks also apply to child labour. In our view, it is important that the Parliament consider how the proposed bill might align with these existing frameworks, including to help promote a consistent international approach. This consistency across frameworks would assist businesses, which may need to comply with multiple laws, as well as stakeholders seeking to hold businesses to account.⁴ There may also be a potential risk that goods denied entry into other jurisdictions with import restrictions in place could be diverted to the Australian market.

We recommend the Parliament assess potential opportunities and lessons learned from the development of these international approaches as part of its review of the bill.

- **United States of America (US):** The US has established a two part import ban framework. Under the *Tariff Act 1930*, US Customs and Border Protection (USCBP) is able to [detain import shipments](#) using Withhold Release Orders (WROs) and Findings where it considers the goods were made using forced labour, forced child labour or forced prison labour (the onus is on USCBP to identify these goods). The *Uyghur Forced Labour Prevention Act 2021* (UFLPA) amended this framework by creating a [rebuttable presumption](#) that goods manufactured in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China, or by entities identified by the US Government, are made with forced labour and so are prohibited from entry into the US. In contrast to the broader Tariff Act approach, the UFLPA places the onus on importers to demonstrate relevant goods are not tainted by forced labour.
- **Canada and Mexico:** [The United States-Mexico-Canada Agreement](#) (USMCA) entered into force on 1 July 2020. Article 23.6 requires member countries to ‘prohibit the importation of goods made in whole or in part with forced labour, including forced or compulsory child labour’. The Canadian Government has subsequently established an import ban covering forced and child labour (which has reportedly been enforced to a limited extent) and Mexico has taken similar steps.
- **The European Union (EU):** The EU is progressing the development of a [regulation](#) to ban products made with forced labour (including forced child labour) from the EU market. Under the regulation, manufacturers of banned goods would be required to withdraw their products from the EU single market and donate, recycle or destroy them.
- **Other relevant legislation:** In addition to import restrictions, some jurisdictions are implementing other types of laws to require certain businesses to undertake human

⁴ For example, it would assist a civil society organisation wishing to provide evidence about child labour in a supply chain if each country had consistent processes around the type of information they would accept and the follow up steps they might take to engage the business.

rights due diligence. For example, the EU is implementing the [Corporate Sustainability Due Diligence Directive](#), which will require relevant businesses to undertake human rights and environmental due diligence. Country-specific human rights due diligence legislation is also in place in certain countries and some of these laws include a specific focus on child labour.⁵

Scope and content of the bill

We recommend Parliament consider the issues outlined below when considering the bill. These issues highlight key areas but are not intended to be comprehensive.

- **Scope:** The bill's focus on child labour is distinct from the approach taken by similar import restriction frameworks internationally (outlined above), which apply to various forms of modern slavery. We recommend the Parliament consider whether there is merit in expanding the bill to address all forms of modern slavery (which could draw on the definition of modern slavery in the Australian MSA).⁶
- **Definition of child labour:** Any definition of child labour used in the bill should be tailored to align with the definitions used by the ILO and in relevant internationally accepted standards. For example, the current definition does not appear to allow for the exceptions around 'light work' for children recognised by the ILO or encompass elements of the definition of child labour that do not relate to access to education. It is also unclear if the definition is meant to encompass the worst forms of child labour, which could impact children aged above the limit of 14 years set in the bill.
- **Resourcing and access to data:** If passed, comprehensive enforcement of the bill would, in our view, be likely to require significant resourcing from Government, including to assess and review relevant data. While there are some available third party sources of information about child labour risks, this information is typically indicative. The Government may also need to independently verify any third party data before taking enforcement action. The bill could also potentially apply to a wide range of products, which may require extensive engagement with a large number of importers. While it may be possible initially to focus on selected higher risk products or sectors, this could also give rise to stakeholder concerns about whether the implementation of the bill is being shaped by geopolitical concerns or other dynamics.
- **Enforcement:** As currently drafted, section 57 of the bill would appear to give the Australian Border Force (ABF) broad powers to specify that importers take certain actions to address child labour risks in the supply chain of a certain product. The

⁵ For example, Switzerland has established a law requiring certain companies to undertake due diligence in relation to conflict minerals and child labour and the Netherlands adopted a Child Labour Due Diligence Act in 2019 (although this law did not enter into force).

⁶ While we note Senator Malcolm Roberts' second reading speech indicated an intent to distinguish between child labour and 'adult slave labour', we recommend further consideration be given to this issue.

Parliament may wish to consider the feasibility of this approach in light of a number of potential challenges. For example, the importing entity may not necessarily be the manufacturer of the relevant goods and may have limited visibility of that company's supply chains or ability to influence changes to these supply chains. In light of the complexity of global supply chains, there may also be limitations on the ABF's ability to appropriately identify what actions may need be taken to address any incidents of child labour and verify their implementation.

Should the Parliament wish to explore other approaches, it could give consideration to a US WRO style framework. This would empower the ABF to seize shipments it considers to be tainted by forced labour, which the importer would then need to demonstrate are free from child labour in order for them to enter the country. This would not involve the ABF identifying and specifying steps required to be taken by the importer to address child labour risks more broadly (as currently envisaged by the bill).

- **Support for businesses:** If implemented, our view is that businesses would likely require significant support from Government to understand its expectations and how any important restrictions would operate. For example, the US has developed extensive guidance materials for businesses about the level of due diligence required to meet the standards set by the UFLPA. Any similar guidance issued in relation to the bill could include information about identifying and managing child labour risks, the types of information Government may require to verify supply chains do not include forced labour, and how to navigate the import restriction framework. This could be complemented with other outreach and awareness-raising activities, such as webinars and engagement with industry bodies.

Conclusion

As part of their internationally recognised responsibility to respect human rights, businesses involved in producing goods imported into Australia should take appropriate steps to identify and address any relevant child labour and broader human rights risks. While we reserve our position on the bill itself, we support the Parliament taking steps to consider this issue, including as similar legislation overseas continues to evolve.