

30<sup>th</sup> April 2024

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra, ACT 2600

## **RE: CUSTOMS AMENDMENT (PREVENTING CHILD LABOUR) BILL 2023**

To the Committee Secretary of the Senate Legal and Constitutional Affairs Committee,

We appreciate the opportunity to make a joint submission to the inquiry on the Customs Amendment (Preventing Child Labour) Bill 2023.

Our submission can be summarised as follows:

1. Prohibiting the import into Australia of goods either entirely or partially comprised of materials obtained or produced using child labour is a welcome improvement to and addresses a clear gap in the legislation in Australia.
2. Though we are broadly in favour of this amendment, we argue that:
  - a. there should be **an immediate ban** on the import of goods using such labour.
  - b. an import ban apply to all goods and their materials obtained or produced either entirely or partially **in any circumstances of forced labour (indeed, any form of modern slavery)**, not just child labour.
  - c. legislation on child and forced labour must be accompanied by **strategies that compel importers to work to address the causes of such labour**, including access to education and replacement and/or alternate sources of income in the case of child labour.
  - d. **penalties** (via an amendment to the *Modern Slavery Act 2018* (Cwth)) be applied to importers for failing to investigate their supply chains for circumstances of child and forced labour.
  - e. **packaging** be included in the scope of the ban.
  - f. a **threshold of reasonable evidence** be introduced to trigger this ban by, and an **inverted legal onus** granted to, Australian Border Force.
  - g. the Minister or (newly established) Anti-Slavery Commissioner compile a **list of countries and goods produced by child or forced labour**.

Our overall reflection is that the more qualifiers we inject in this legislation (eg: age groups, working conditions, packaging line of work or not, other factors), the more difficult will be to operationalise such legislation. If we aim for successful implementation, we need to avoid injecting obstacles. We ask for a clear legislation that is operative in its immediacy.

Based on the points above, we move the following recommendations:

- this Bill becomes broader than this in its immediacy, and it is approved for all imported goods that either entirely or partially comprised of materials obtained or produced using child and other forced labour. As such, we recommend that **the Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021, which would include also the Customs Amendment (Preventing Child Labour) provision, is resumed and actioned immediately;**
- **the Australian Border Force is offered a reversed legal onus in regards of the threshold of reasonable evidence; and**
- **the Australian Minister or Anti-Slavery Commissioner produces and updates a**

**list of goods and countries of high risk of modern slavery.**

We come to this evidence-based conclusion based on our expertise and knowledge on forms of modern slavery, accumulated in current and past research studies over decades. We are also very knowledgeable of the stands taken by other jurisdictions, as our submission covers below, and we are aware that Australia is not leading in this matter, despite on many occasions such claims being made in the past and current Australian Government.

We urge the Parliament to adopt this amendment in its wider provision as recommended by us, to cover all imports linked to forced labour, not just children-related.

Yours sincerely,

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## Proposed Bill is needed but is insufficient

1. Data show that child labour is on the rise internationally, with an estimated 160 million children in child labour (International Labor Organization (ILO) 2021), and it is particularly an issue in the Asia-Pacific region. According to the ILO (2021), an estimated one in three children in child labour aged between 5 to 17 years are out of school. We note that Australia has ratified the ILO's Worst Forms of Child Labour Convention (No.182) and Minimum Age Convention (No.138), meaning that all work involving child labour (not just its 'worst forms') is contrary to international law and Australia has an international legal obligation to prohibit its use.
2. The Explanatory Memorandum notes that in many places there may be a reliance on child labour to sustain families and beyond, stating that "[v]illages and regions rely on child labour for a meagre income" and "removing that income in the name of fighting child labour could be counterproductive" (Roberts 2023: 2). "Knee-jerk bans will lead to supply shortages", the Memorandum states, "that may encourage dishonest behaviour that undermine the intention of the bill". It is for these reasons (among others) that "a 48-month arc between non-compliance with the notice and banning" is provided to importers "to work with producers to correct their labour practices" (Roberts 2023: 2).
3. By not prohibiting the immediate import of goods using child labour and providing importers "a 48-month arc ... to work with producers to correct their labour practices" (Roberts 2023: 2), the Australian Government creates a regime of permission whereby importers can continue to profit knowingly from goods that use such labour (Marmo and Bandiera 2022). Not implementing an immediate ban on the import of such goods puts us out of step with other jurisdictions. For example, in the United States (US), Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) prohibits the importation of any goods produced under circumstances of forced labour (including child labour) and permits the seizure of such goods by US Customs and Border Protection (CBP). The threshold of reasonable evidence is sufficient to trigger such a ban and it can also trigger a concurrent criminal investigation by US CBP. In April 2024, the European Union issued the Forced Labour Regulation (EU FLR.23). Under this legislation, products made with forced labour (including forced child labour) will be banned from the EU market. We therefore argue that there should be an immediate ban on the import of goods using such labour to align Australia with comparable jurisdictions.
4. If the 48 month-arc is to be implemented, at the very least there should be compulsion on importers to engage in "ethical" supply through establishing agreements with producers to minimise impact on the ground, especially in those geo-political areas lacking economic and non-economic opportunities, by helping those families who may lose income due to this new Australian legislation by offering support and contributing to the education of those very children diverted from their studies to labour. Therefore, we firmly believe that any legislation addressing child labour or other form of forced labour must be accompanied by strategies that address the underlying causes of this labour, including access to education and replacement and/or alternate sources of income to discourage the reliance on such labour. We believe the public and private sector needs to be part of this strategy; this responsibility cannot be left to national and international governmental and non-governmental organisation.
5. It is very unclear - and in contradiction with the *Modern Slavery Act 2018* (Cwth) - to state, as per the Explanatory Memorandum: "The bill operates by exception. This means most importers will not have cause to review their supply chain" (Roberts 2023: 3). If injecting incentives to ensure compliance with the 48-month arc as per above, the Bill

must make a firmer statement (with ‘teeth’) to increase its applicability to importers, if they do not investigate their supply chains adequately to ensure that this type of labour is not being used. We advocate for the injection of penalties (perhaps via an amendment to the *Modern Slavery Act 2018* (Cwth)) to be issued for importing companies in such circumstances. Currently, the Australian and NSW Modern Slavery Acts contain no criminal or civil penalties for failing to comply with the minimum mandatory reporting criteria (aside from failing to submit a modern slavery statement or having a due diligence system in place) or for failing to take the action stated. Synchronising this amendment with penalties injected through amendments to the *Modern Slavery Act 2018* (Cwth) may help reduce the reliance on self-regulation, which historically has not produced the expected results (i.e., a reduction in modern slavery) in a timely fashion (e.g., see Dinshaw et al. 2022; Richards 2022; Sinclair and Dinshaw 2022; Stevenson and Cole 2018).

6. We do not advocate for a ‘scale of sufferance’ that distinguishes between the worst and less-worse child jobs. For the same line of reasoning, we ask that ‘packaging’ should be included in the scope of such ban, and that no exceptions of this nature are injected into the Bill. The Explanatory Memorandum claimed “[t]his decision was taken for practicality.” But we disagree as it leaves the stone half turned in terms of how packaging is regulated and in what context it takes place.
7. The Bill lacks a clear indication of the threshold for action, specifically the standard of evidence that must be provided to demonstrate that a particular good may be ‘suspect’. We strongly advise the introduction of the threshold of reasonable evidence to trigger such ban. This is in line with the US provision under Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307). Here, the threshold is “rebuttable presumption”, meaning that there is no need for conclusive evidence to impose a ban and take further action. Australia should follow this existing international precedence. Using reasonable evidence would align with a human rights approach and bring about actual change to practice.
8. The Australian Border Force (ABF) should not be the one to collect, determine, and defend such evidence. Currently, the legal onus is on the ABF to demonstrate its reasonable ground that the good is in breach of an import prohibition, not the importing entity/individual. We ask to invert this, and to place the onus on the importer to prove that the goods are not prohibited imports. This is more in line with the ‘action’ on importers we ask to be injected in this legislation [Paragraph 4]. We also believe this is more in line with the latest recommendations regarding amendments to the *Modern Slavery Act 2018* (Cwth).
9. We wish to flag that, for the purpose of the threshold of reasonable evidence, that the US Department of Labor’s Bureau of International Labor Affairs have already compiled and updates regularly a list of goods produced by child labour or forced labour, currently comprising 159 goods from 78 countries and areas (US Department of Labor 2022). Australia will need to follow suit, and under the Minister or (the newly established) Anti-Slavery Commissioner, a list of goods and countries will have to be compiled to facilitate the execution of such legislation.

Proposed Bill should ban all imports from forced labour

10. We note that it is limiting to prohibit imports in circumstances of *child* labour and not all circumstances of forced labour (let alone, modern slavery). Currently, Australian imports at risk of being produced by forced labour (including child labour) is estimated at AUD 26.5 billion (Walk Free Foundation 2023). By accepting the import of goods (entirely or

partially) obtained or produced in circumstances of modern slavery, the Australian Government is neglecting its international obligations, namely those under the *Universal Declaration of Human Rights* and *International Covenant on Civil and Political Rights*, to uphold human rights at any point in time and towards everyone, notwithstanding their age. A prohibition of imports in circumstances of child labour puts Australia out of step with comparable jurisdictions and must be remedied by the Australian Government to align us with best practice.

11. In Australia, criminal and civil liability for human and labour rights violations by public and private sector entities, for engaging in or inaction on modern slavery when it is identified (e.g., by failing to report and/or continuing a relationship with a supplier known to be engaging in modern slavery), is rare, in contrast with other jurisdictions. For example, there is a case before the US Federal District Court for the District of Columbia against US subsidiaries of the Australian manufacturer Ansell Ltd for “knowingly profiting” from forced labour (Documents filed by IRAdvocates 2022), while in Australia this has been completely overlooked (see Marmo and Bandiera 2022).
12. We note that from a practical standpoint that adopting a Bill prohibiting imports in circumstances of forced (not just child) labour is less onerous on the Australian Border Force and other government authorities in terms of reducing the complexity of demonstrating that a breach indeed occurred. **The more ‘cut-offs’ we inject (age groups, working conditions, packaging line of work or not, other factors), the more difficult it is to operationalise any legislation.** While we understand it is a good political statement to claim that Australia has banned child forced labour, it is not as incisive and easy-to-administer as a wider ban.
13. We also note that the Senate Foreign Affairs, Defence and Trade Legislation Committee held a similar inquiry in 2021 for the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020, and we made a written submission stating similar points to those made above (see Marmo and Bandiera 2021). Recommendation 1 of the report published by the Committee (2021: vii) explicitly stated that ‘the Customs Act 1901 ... be amended to prohibit the import of any goods made wholly or in part with forced labour’. Shortly thereafter and based on this and recommendations, Senator Rex Patrick, a participant on this Committee, introduced the Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021. However, it remains un-tabled in the lower house.
14. With these points in mind, we strongly recommend the adoption of a wider Bill that includes all forms of forced labour (including child labour), affords the ABF the threshold of reasonable evidence and inverted legal onus [Paragraphs 7 and 8], and to produce and update a list of goods and countries of high risk of modern slavery [Paragraph 9].

## Conclusion

The proposed legislative change is not enough. While it is a step in the right direction, and we fully support this step, this is not sufficient. Australia claims to be a leader on modern but we must do more and be better, as our counterparts are doing more and being better. We recommend that the Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021 is resumed and actioned immediately, with the power of ‘rebuttable presumptions’ to the ABF and with a list of goods and countries of high risk of modern slavery.

## References:

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## Legislation:

- Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020 (AUS)
- Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021 (AUS)
- Forced Labour Regulation (EU FLR).23 (EU)
- Modern Slavery Act 2018* (Cwth) (AUS)
- Tariff Act of 1930 19 U.S.C. §1307 (US)