



Submission: Customs Amendment (Preventing Child Labour) Bill 2023

PREPARED FOR THE SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE

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About the National Retail Association



The National Retail Association is a not-for-profit organisation that represents the interests of retailers across Australia.



We exist to support, inform, protect, and represent the interests of retailers and fast-food businesses. We understand the issues and opportunities facing retailers every day.



Our members can expect to receive the latest industry information, the fastest news updates, and the best range of industry insights to help their business grow and succeed



The retail industry plays a huge role in Australia's economy, employment and greater livelihood and we are dedicated to helping unite retailers and stakeholders for the success of the industry now, and for the future.

Executive Summary

The National Retail Association (National Retail) welcomes the opportunity to make this submission to the Senate Inquiry into the Customs Amendment (Preventing Child Labour) Bill 2023 (“the Bill”).

National Retail opposes all forms of modern slavery and supports in principle prohibiting the import of goods involving forced child labour. Other circumstances of child labour can deny a child’s access to education resulting in long term disadvantage to the child.

National Retail has concerns that the Bill conflates the 2 issues of child labour, where the former falls well under the banner of modern slavery, whereas the latter does not. Furthermore, the Government is currently developing other modern slavery policy initiatives from the 2023 Review of the Modern Slavery Act 2018 (Cth) and appointing an Anti-Modern Slavery Commissioner. Finalisation of the Bill should be delayed and coordinated with these activities.

When child labour is not coercive and contributes to the wellbeing of the child and its community, National Retail favours actions which allow communities an orderly transition to adult labour without undue hardship, and consistent with national definitions of the age of children and associated local mandatory education legislation. Banning the import of products should be an action of last resort in these cases.

The Bill proposes exempting product packaging from the import prohibition recognising the complexity in tracking the origin of packing material and the subsequent difficulty in enforcing compliance. National Retail has concerns that similar difficulties exist for the minor components of some products and recommends further consideration should be given as to how the Bill proposes multi-component products might be treated, when very minor components may be non-compliant.

The Bill refers to ‘importers’ without recognising that goods cross the border into Australia under the custody of different types of entities, some of which are simply providing a delivery service, rather than being actively involved in sourcing the goods. National Retail considers the Bill should clarify which entities will be considered responsible for ensuring goods are compliant with proposed import bans.

The Bill proposes that the banning of a good may occur when an authorised officer has reason to believe that the good may be non-compliant, including from information received from third parties such as NGOs promoting human rights causes. National Retail counsels that enforcement actions must be based on robust levels of evidence of non-compliance to protect importers from mischief and misinformation which may trigger a notification to an importer.

When importers are notified by authorities to produce evidence that goods being imported are compliant National Retail suggests that they be permitted to submit disclosure statements prepared in accordance with the requirements of the Modern Slavery Act 2018 (Cth) as part of demonstrating compliance.

National Retail notes that the Minister may determine to publish (on a website) enforcement dealings as a 'name and shame' action. National Retail expects a great majority of business will strive to be compliant and requests publication to occur only as last resort when dealing with recalcitrant offenders.

International supply chains are highly complex, and it can be challenging for companies (particularly SMEs) to secure the information they need to be assured that products they are sourcing will comply with the foreshadowed import bans. National Retail requests the Australian Government consider how it might assist industry by sharing intelligence on products and regions where the risk associated with force child labour might be high.

National Retail stands ready to provide additional information on the positions presented in this submission.

Recommendations

The National Retail Association recommends that:

1. Further consideration of the *Customs Amendment (Preventing Child Labour) Bill 2023* is required to:
 - In the case of forced child labour, ensure complete alignment and coordination with the Government's current policy development in amending the *Modern Slavery Act 2018 (Cth)* and activities which might be commenced by the Anti-Modern Slavery Commission, and
 - Explore how the Bill might better support businesses working with their suppliers to assist communities to transition to greater use of adult labour thereby releasing children to take advantage of education opportunities.
2. The National Retail Association recommends that further consideration should be given to the implications of the way multi-component goods are treated under the Bill, and specifically when very minor components might be considered non-compliant, rendering the whole product non-compliant.
3. The National Retail Association recommends that the Bill defines entities considered to be 'importers' to those companies ordering a good from an overseas supplier, and exempting entities which might be acting as a shipping or delivery service for that good.
4. The National Retail Association recommends enforcement actions resulting in notices to importers be based on robust levels of evidence that an imported good involves child labour
5. The National Retail Association recommends further investigation to determine if the compliance requirements of the foreshadowed amended *Customs Act 1901* could be satisfied in part by the disclosure statements requirements of the *Modern Slavery Act 2018 (Cth)* for some companies.

Introductory statement

The National Retail Association (National Retail) welcomes the opportunity to make this submission to the Senate Inquiry into the *Customs Amendment (Preventing Child Labour) Bill 2023* (“the Bill”) to amend the *Customs Act 1901* and for related purposes.

National Retail opposes forced labour of any kind and notes that forced child labour falls under the broad definition of modern slavery coercive labour practices. National Retail unequivocally supports the need for legislation and regulations as critical tools in the suite of anti-modern slavery policy responses of governments at international, national, and state and territory levels.

National Retail supports the need for a regulatory framework requiring businesses and other entities to reduce the risks, and ideally eliminate, modern slavery from their operations and supply chains and the Association welcomed the *Modern Slavery Act 2018* (Cth) when gazetted. In addition, National Retail made submissions to the subsequent statutory 3-year review of the Act which was tabled in Federal Parliament in May 2023.

National Retail recognises that due to the very complex nature of business-to-business relationships and supply chains, regulations need to be outcomes based, rather than prescriptive. National Retail’s established overarching policy principles include:

- supporting unequivocally the need for legislation and regulations as critical tools in the suite of anti-modern slavery policy responses of governments at international, national, and state and territory levels
- advocating policy and regulatory responses which adhere to the principles of best practice policy and regulation as described by Federal Government’s [Office of Impact Analysis](#)
- advising that a ‘one size fits all’ approach to the retail sector is not appropriate given, the wide range of businesses in size, nature, and resources,
- seeking to work with governments (Federal, States and Territories) to secure fit for purpose anti-modern slavery legislation and regulation, and
- promoting awareness of anti-modern slavery regulatory obligations across the retail sector to support efficient and effective implementation by government and universal compliance by industry.

Complementarity of Approach

National Retail strongly supports the fundamental purpose of the Bill, which is to ban the importation of goods produced using child labour which disadvantages the child.

More specifically, National Retail recognises and supports the drivers for the Bill namely to effect change in international supply chains to discourage:

- the use of forced child labour i.e. coercive exploitation of child labour
- child labour which limits or denies the access to education by children, and which
- reflects Australia's commitment to eliminating child labour following the ratification of International Labour Organization (ILO) *Protocol of 2014 to Forced Labour Convention 1930*.

The *Modern Slavery Act 2018 (Cth)* requires companies¹ to assess and minimise the risk of modern slavery occurrences in their supply chains (and make disclosure statements to that effect). On the other hand, the Bill empowers custom authorities (i.e. Australia Border Force) to seek assurances and evidence from importers that imported goods comply with the terms of the Bill, and if assurances are unsatisfactory, to ban importation of the goods.

Thus, the regulatory approach of the Bill complements that of the Act. The Bill (if passed by the Parliament) allows products produced with child labour being banned from entering Australia; the Act reduces the risk of Australia being a market destination for those products. The overall intended effect is to send clear market signal and disincentive to use child labour for goods destined for Australia.

Notwithstanding these comments, National Retail considers the Bill is conflating 2 issues vis:

1. Forced child labour which falls under the scope of the *Modern Slavery Act 2018 (Cth)* which includes forced child labour under hazardous conditions, sexual exploitation and the production and trafficking of drugs; and
2. Child labour, which may be unpaid or poorly paid but contributes to the livelihood of the child's family and possibly the wide community. The child, however, may be disadvantaged through missing education opportunities, or the practice may contravene the minimum age for child labour and mandatory education in the country.

In the case of forced child labour, the Government is already updating its modern slavery policies in response to the Statutory 3 Year Review of the *Modern Slavery Act 2018* which was tabled in Parliament in May 2023. Furthermore, the Government is in the process of appointing an Anti-Modern Slavery Commissioner. It is highly likely that amendments of the Act and the future work program of the Anti-Modern Slavery Commissioner will look closely at all aspects of modern slavery, including forced child labour with the aim of developing further policy and regulatory responses to eliminate all forced child labour from supply chains of goods destined for Australia. National Retail suggests progressing the Bill should be delayed until there is greater clarity regarding impending policy initiatives.

¹ Only companies with greater than \$100m annual turnover are required to comply with the *Modern Slavery Act 2018 (Cth)*

National Retail considers a more nuanced approach where the aim is to ensure overseas countries' children get the opportunity to receive a reasonable education based on the local legislative arrangements regarding the mandatory age of education and minimum age of employment. National Retail does not consider that banning importation of such products is necessarily the best approach, but rather is an unnecessarily blunt instrument. The Explanatory Memorandum to the Bill suggests that endeavours should be made to assist communities to transition to adult labour to allow children full education opportunities. National Retail agrees with this more sympathetic approach.

Recommendation 1.

The National Retail Association recommends further consideration of the *Customs Amendment (Preventing Child Labour) Bill 2023* is required to:

- In the case of forced child labour, ensure complete alignment and coordination with the Government's current policy development in amending the *Modern Slavery Act 2018 (Cth)* and activities which might be commenced by the Anti-Modern Slavery Commission, and
- Explore how the Bill might better support businesses working with their suppliers to assist communities to transition to greater use of adult labour thereby releasing children to take advantage of education opportunities.

Scope of the Bill

Forced child labour

Clearly forced child labour cannot be tolerated as it transgresses a fundamental human right².

National Retail supports the Bill in its intention to reduce and ultimately eliminate the import of all products produced with forced child labour, without exception.

As described above, however, National Retail counsels that the Bill should be changed to ensure that any regulatory actions in the area are delayed ensuring appropriate coordination with policy and regulatory reforms currently under development by Government as part of its response to the Review of the *Modern Slavery Act 2018*.

Other child labour

The Bill also seeks to ensure that other forms of child labour do not adversely affect the educational opportunities of children, which is also a fundamental right. In this endeavour the Bill is more circumspect recognising 2 realities in some developing countries that:

- the regulated minimum age for child labour may differ from the international convention of under 14 years of age with which the Bill aligns, and

² [International Convention on Rights of the Child](#); [ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up](#).

- child labour is an important contributor to the economies of communities and banning the labour could result in a substantial loss of income to individual family groups and their wider community. Notwithstanding this, it is important that such communities are assisted in transitioning their economies to be less reliant on, and ideally independent of, child labour as noted in the Explanatory Memorandum.

National Retail recognises the fundamental importance of the education of children to lifting communities out of poverty and assisting nations to develop.

Consequently, National Retail supports the Bill's intention to discourage the use of child labour which limits or denies access of a child to educational opportunities whilst respecting the minimum age for compulsory education in their country.

As described above, however, National Retail is not convinced that an import ban is the most effective approach, due to the negative impacts it may have on communities overseas in the short term.

Goods captured and exemption of packaging

Section 54 of the Bill defines goods involving child labour as:

- goods obtained or produced using child labour, or
- goods entirely or partially composed of materials that are obtained or produced using child labour.

This means that when a very minor component of a good is '*obtained or produced using child labour*' the whole product is banned from being imported. While National Retail agrees with the sentiment and intent of this approach which seeks to ensure zero non-compliant material (packaging excepted, see below) is imported, such an absolute requirement may be difficult to obtain for goods which have many components sourced from multiple countries through complex international supply chains.

For practical reasons, the Bill exempts packaging from requirements regarding child labour. Suppliers should have greater knowledge of their products and how they are produced to provide assurances regarding their nature to their downstream customers, and ultimately to consumers. It is impractical, however, to expect suppliers to have the same knowledge regarding the packaging used for the products.

The Explanatory Memorandum notes the difficulty in enforcing the provisions of the Bill if extended to product packaging. In some circumstances similar practical difficulties might apply to minor components of goods and it may be appropriate for a similar flexible approach to compliance and enforcement to be adopted.

National Retail supports the exemption for product packaging provided by the Bill.

Recommendation 2.

The National Retail Association recommends that further consideration should be given to the implications of the way multi-component goods are treated under the Bill, and specifically when very minor components might be considered non-compliant, rendering the whole product non-compliant.

Enforcement and Compliance

Who is the importer?

The Bill imposes an obligation on all importers not to import goods produced using child labour. Consequently, all importers should strive to comply with the Bill by engaging with the suppliers of goods and their components to gain an understanding and assurances that child labour is not used in their products.

In contrast, the *Modern Slavery Act 2018 (Cth)* applies only to entities (i.e. companies) with an annual turnover exceeding \$100m *per annum*. Thus, the Bill will apply to many SMEs which currently are not required to comply with the Act.

Many SMEs retailers source products from larger distributors which import products. In this case the importing distributor rather than the retailer would need to comply with the Act. In some cases, however, SMEs will be the importer and subject to the provisions of the Bill.

The Bill, as currently drafted, does not define precisely when an entity is an 'importer'. National Retail suggests this should be clarified in the Bill. A possible approach is for the definition of 'importer' to mean the entity which specified the good from an overseas supplier.

Recommendation 3.

The National Retail Association recommends that the Bill defines entities considered to be 'importers' to those companies ordering a good from an overseas supplier, and exempting entities which might be acting as a shipping or delivery service for that good.

Notices to Importers

National Retail understands that in enforcing the Bill, Authorised officers may:

- seek information and documents from importers about suspected goods involving child labour; and subsequently
- require importers to take action to reduce the risk that import of similar goods does not involve child labour.

The Officers may initiate enforcement actions based on their own concerns or in response to information received from other parties who may monitor or have information about overseas child labour practices.

National Retail recognises the legitimate role NGOs³ have in monitoring and drawing attention to human rights abuses including forced child labour. It is important, however, that any enforcement action by Authorised officers, including that following information received from other parties, is based on firm evidence. Import bans can have a substantial negative financial impact on the communities producing the product as noted in the Explanatory Memorandum and discussed earlier in this submission. It can also result in substantial

³ NGOs – Non-government organisations promoting human rights or other causes.

costs for the importer seeking alternative sources of product, and lasting brand damage. Importers must be protected from poorly informed enforcement actions, including those which may originate from vexatious, malicious, or mischievous sources.

Therefore, when NGOs or other parties raise concerns, or allegations, regarding child labour they should be able to:

1. Give details about the goods, the identity of suppliers at point of origin of the goods, the nature of the child labour being used, and
2. Provide production dates, batch numbers and/or other identifiers.

These measures are to ensure the goods of concern are clearly identified to avoid other similar goods being affected by enforcement actions.

Recommendation 4.

The National Retail Association recommends enforcement actions resulting in notices to importers be based on robust levels of evidence that an imported good involves child labour.

National Retail suggests the Bill also includes provisions which would make it an offense to make vexatious or mischievous allegations regarding the illegal use of child labour in the products goods being imported, reflecting the substantial waste of resources which can result both for enforcement agencies, and the businesses which are affected.

Self-incrimination

National Retail notes the Bill dis-allows self-incrimination to occur from the disclosure of information requested of importers about products suspected of involving child labour, except as it relates to the section 137.1 or 137.2 of the *Criminal Code* in relation to giving the information or producing documentation related to compliance the foreshadowed amended Act.⁴

National Retail supports this pragmatic approach, removing a potential dis-incentive for companies to provide information which would lead to the banning of imports and the protection of children.

Publication of notices and non-compliance

National Retail notes that the Bill allows the Secretary of the Department to maintain a website and publish information about notices and non-compliance. In most cases businesses will be eager to comply with notices and make changes to their business operations to minimise and eliminate the risk importing goods involving child labour. 'Naming and shaming' should be a last resort measure to address non-compliance as it can be very damaging to company and brand reputations. It should not become a routine part of the enforcement and compliance activities.

⁴ i.e. the *Customs Act 1901*

National Retail advises that publication of notices and non-compliance should be a 'last resort' measure to secure the cessation of imports of goods involving child labour.

Further Comments

The *Customs Amendment (Preventing Child Labour) Bill 2023* which seeks to amend the *Customs Act 1901* is consistent with the actions being taken by other countries to address forced child labour⁵. When the amendment comes into force it will add to the numerous legislative instruments being introduced worldwide to reduce and eliminate coercive labour practices considered to be forms of modern slavery.

The National Retail Association considers that for the legislation to be truly effective the government and the private sector need to work together. Globalisation has led to the evolution of highly complex supply chains with many goods and their components crisscrossing the globe many times before reaching the final consumer.

Unravelling supply chains and describing the nature of all human labour inputs into internationally sourced goods is a substantial challenge to many industry sectors. It is resource intensive requiring dedicated, expert, and experienced operatives at the company level. And the task is made particularly difficult when overseas governments or companies are less than cooperative when it comes to information sharing regarding labour practices.

The Government can assist industries by collecting and collating information about the labour practices in different industry sectors in other countries. The USA Government maintains a *List of Products Produced by Forced or Indentured Child Labor*⁶ which lists product types by country, or region, where there are heightened concerns regarding the use of forced labour. As of September 2022, the List comprised 159 goods from 78 countries and areas. The main purpose of the List is to raise public awareness of forced and child labour, promote efforts to combat them and to be a resource for organisations engaged in due diligence assessment of their supply chains.

National Retail considers the Federal Government could develop a similar list based on intelligence it may have regarding child labour practices overseas.

In the event of an importer being issued with a notice to give information or documents or to take a particular action in relations to goods, in order to comply with the amended *Customs Act 1901* National Retail suggests that disclosure statement prepared by companies under the provisions of *Modern Slavery Act 2018* could suffice to demonstrate the integrity of goods (i.e. not involved in forced child labour) and supply chain along which they passed.

Thus, the disclosure statements prepared by companies to meet the requirements of the *Modern Slavery Act 2018 (Cth)* could serve as a part of demonstrating compliance with the foreshadowed amended *Customs Act 1901*.

⁵ For example: The US *Tariff Act 1930* prohibits the importation of merchandise mined, produced, or manufactured, wholly or in part in any foreign country, by forced or indentured labour, including forced child labour.

⁶ [List of Products Produced by Forced or Indentured Child Labor | U.S. Department of Labor \(dol.gov\)](#).

Recommendation 5.

The National Retail Association recommends further investigation to determine if the compliance requirements of the foreshadowed amended *Customs Act 1901* could be satisfied in part by the disclosure statements requirements of the *Modern Slavery Act 2018 (Cth)* for some companies.

Conclusions

National Retail supports the overall intention of the Bill to reduce harm to children overseas through undesirable labour practices. Import bans are by their nature absolute and may be inappropriate for many situations. Consequently, National Retail has advised that further consideration be given to:

1. Ensuring any border restrictions on the importation of goods is aligned and coordinated with other government initiatives currently under development to combat modern slavery, and
2. A broader policy approach which may be more effective in bringing about changes in child labour practices overseas consistent with meeting children's educational needs.

The National Retail Association stands ready to provide further information on, or clarification of, the positions it has presented in this submission.