

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

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

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Acknowledgments

Anti-Slavery Australia acknowledges the traditional Owners of Country and the Holders of Knowledge for this place, the Gadigal people of the Eora Nation, upon whose lands and waters we work, and extend our respect to their Elders both past, present and emerging.

Anti-Slavery Australia expresses its sincere gratitude and respect for all survivors of modern slavery whose experiences have inspired and continue to drive our advocacy for survivors' rights to be protected and fulfilled.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

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1. Executive Summary

Anti-Slavery Australia, at the University of Technology Sydney, welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the *Customs Amendment (Preventing Child Labour) Bill 2023* (the Bill).

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

Anti-Slavery Australia makes the following overarching recommendations to strengthen the *Customs Amendment (Preventing Child Labour) Bill 2023*:

- Broaden the scope of the import ban.
- Introduce a rebuttable presumption.
- Make penalties stronger.
- Develop an annual compilation of high-risk goods.
- Explore complementary legislative approaches.

2. About Anti-Slavery Australia

Anti-Slavery Australia is the only specialist legal, research and policy university centre in Australia working to end modern slavery. For 20 years, our team has been providing access to pro bono legal and migration services to people who have experienced or are at-risk of modern slavery; engaging in research and advocacy grounded in the firsthand experience of survivors; and delivering training on modern slavery to frontline service providers, government, community, law enforcement, business, students and educators.

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3. Child Labour

Global estimates indicate that 160 million children – 63 million girls and 97 million boys – were in child labour globally at the beginning of 2020, accounting for almost 1 in 10 of all children worldwide.¹ Further, the COVID-19 pandemic increased the vulnerability of children to child labour, and analysis suggested a further 8.9 million would be in child labour by the end of 2022.² While the agricultural sector accounts for the largest share of child labour globally, services (e.g. domestic work and work in commerce, transport and motor vehicle repair) and industry (e.g. construction, mining and manufacturing) also make up a large proportion.³ Factors such as poverty reduction, levels of informality, social protection, education exclusion and population growth, all influence progress in reducing child labour.⁴

Efforts have been made over the last few decades to reduce the presence of child labour in Tier 1 of global supply chains, yet the risk of child labour in lower tiers is still very much present.⁵ While a similar study has not been conducted specifically in an Australian context,⁶ World Vision Canada found that Canadian imports of products that may contain child or forced labour was \$48 billion in 2021.⁷ Consequently, it is evident that business have a clear role to play in the elimination of child labour.

4. Recommendations to Strengthen the Customs Amendment (Preventing Child Labour) Bill 2023

The Customs Amendment (Preventing Child Labour) Bill 2023 is driven by the intention to disrupt the cycle of poverty which makes children more vulnerable to child labour and

¹ UNICEF and the International Labour Organization, 'Child Labour: Global estimates 2020, trends and the road forward' (2021), <https://data.unicef.org/resources/child-labour-2020-global-estimates-trends-and-the-road-forward/>.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Rachele Jackson, UNICEF, 'Mapping Child Labour Risks in Global Supply Chains: An Analysis of the Apparel, Electronics and Agricultural Sectors' (2019), <https://www.unicef.nl/files/Child%20Labour%20in%20Global%20Supply%20Chains.pdf>.

⁶ The Global Slavery Index found that Australia imports US\$17.4 billion products at-risk of being made using forced labour annually, however, this specifically relates to forced labour, and does not breakdown a subset of child labour.

⁷ World Vision Canada, 'Supply Chain Risk Report' (2023), <https://www.worldvision.ca/WorldVisionCanada/media/NCFS/Reports/WVC-FY23-Q1-Child-Labour-Risky-Goods-Report-2023.pdf>

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ultimately deprives them of the opportunity to improve their own lives.⁸ Anti-Slavery Australia believes this Bill offers an opportunity for legislative intervention in addressing severe forms of labour exploitation within supply chains. Our recommendations aim to bolster the effectiveness of the Bill by emphasising a more comprehensive approach.

Broaden the scope of the import ban

While the current emphasis of the Bill targets child labour, Anti-Slavery Australia proposes an amendment of the scope to include forced labour and forced child labour (capturing the worst forms of child labour). This adjustment acknowledges the prevalence of forced labour within supply chains,⁹ and aligns with international efforts including other legislated import restrictions.

We also note previous attempts in an Australian context to introduce a forced labour import ban. In 2021, the Australian Senate voted to pass the *Customs Amendment (Banning Goods Produced by Forced Labour) Bill* prohibiting the import of any goods made by forced labour into Australia. However, this Bill did not progress into law as it was not considered by the House of Representatives.¹⁰

Further, proposed sections 53 and 54 of the Bill set out definitions for the terms child labour and goods involving child labour. Anti-Slavery Australia observes that each of the proposed definitions differ from international standards. Anti-Slavery Australia recognises the value in adopting internationally recognised language particularly as the Bill is intended to address harms that take place in global supply chains. We address this below in greater detail and recommend that the definitions be harmonised to ensure consistency with internationally recognised standards.

Definition of 'child labour'

Section 53 of the Bill provides:

53 Meaning of child labour

⁸ Explanatory Memorandum, *Customs Amendment (Preventing Child Labour) Bill 2023*.

⁹ The Global Estimates of Modern Slavery estimate there were 27.6 million people in forced labour on any given day in 2021.

¹⁰ *Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021 (Cth)* (2021).

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Work carried out by an individual in a foreign country, or a part of a foreign country, is child labour if:

- (a) the individual is under 14 years of age; and*
- (b) in the case where there is compulsory schooling, and a minimum age for ceasing compulsory schooling, in the foreign country or the part of the foreign country—both:*
 - (i) the individual is under that minimum age; and*
 - (ii) the individual is absent at any time from compulsory schooling in the foreign country, or the part of the foreign country, as a result of carrying out the work.*

The Bill proposes amending the definitions section of the *Customs Act 1901* to include the term 'work', which is defined as 'any work whether for reward or otherwise.'¹¹

The Explanatory Memorandum (EM) states that the definition under section 53, 'draws on the *International Labour Organisation Convention No. 138: Convention concerning Minimum Age for Admission to Employment* (the *ILO Convention*).'¹² The EM suggests that '[t]he wording reflects the fact that while the *ILO Convention* provides that a minimum age for admission to employment or work should be either 14 or 15 years of age, many countries have compulsory schooling to a lesser age.'¹³

The Explanatory Memorandum further asserts that:

'...it is not Australia's place to specify a higher age for work than the country itself requires. The whole point of the ILO Convention is to ensure every child receives compulsory schooling, and in that process, is equipped with the knowledge to advance their economic status. It remains a sovereign right of each country to specify what age that is.

*As a result, the definition in section 53 excludes a child under 14 who has completed compulsory schooling and is working.'*¹⁴

Respectfully, in our view, this interpretation does not fully accurately align with the objectives of the *ILO Convention* or Australia's obligations under international human rights law.

Pursuant to article 1, the objective of the *ILO Convention* is to 'ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or

¹¹ Customs Amendment (Preventing Child Labour) Bill 2023, subsection 4(1).

¹² Explanatory Memorandum, Customs Amendment (Preventing Child Labour) Bill 2023, 2.

¹³ Explanatory Memorandum, Customs Amendment (Preventing Child Labour) Bill 2023, 5 [9].

¹⁴ Explanatory Memorandum, Customs Amendment (Preventing Child Labour) Bill 2023, 5 [10].

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work to a level consistent with the fullest physical and mental development of young persons.¹⁵ Although education undoubtedly falls within the meaning of 'the fullest physical and mental development of young persons', it is not itself expressed to be the primary objective of the *ILO Convention*.

Article 2(1) of the *ILO Convention* calls on ratifying States to:

*'specify, in a declaration appended to its ratification, a minimum age for admission to employment or work... subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.'*¹⁶

Article 2(3) provides that the:

*'minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.'*¹⁷

An exception to article 2(3) is contained in article 2(4), which allows a Member State 'whose economy and educational facilities are insufficiently developed' to initially specify a minimum age of 14 years following consultation with affected employers and workers organisations.¹⁸ However, in accordance with article 2(5), any Member State specifying a minimum age of 14 years must provide a statement outlining its reason for doing so or stipulating a date on which it renounces its right to avail itself of the provisions in question.¹⁹ Of the 176 ratifications, 52 States have specified a minimum age of 14 years.²⁰ No country has specified a minimum age less than 14 years.

The *ILO Convention* recognises that national laws and regulations may permit children between 13 and 15 years of age to engage in light work, which is considered work not likely to be harmful to their health or development; and not such as to prejudice their attendance at school or their participation in vocational orientation or training programmes or affect their

¹⁵ *ILO Convention Concerning Minimum Age for Admission to Employment*, open for signature 26 June 1973, 1015 UNTS 297, entered into force 19 June 1976, art 1 ('*ILO Convention*').

¹⁶ *ILO Convention* art 2(1).

¹⁷ *ILO Convention* art 2(3).

¹⁸ *ILO Convention* art 2(4).

¹⁹ *ILO Convention* art 2(5).

²⁰ See 'Ratifications of C138 – Minimum Age Convention, 1973 (No. 138)', *International Labour Organisation* (Web Page) accessed 22 April 2024, <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283>.

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capacity to benefit from the instruction received.²¹ For countries who have specified 14 years as the minimum age of admission to employment, light work may be permitted for children between the ages of 12 to 14 years of age.²²

However, with regard to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety and morals of young persons, the *ILO Convention* requires that the minimum age must not be less than 18 years.²³ This aligns with the definition of the 'worst forms of child labour' under the *ILO Worst Forms of Child Labour Convention*.²⁴

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

- (a) *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;*
- (b) *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- (c) *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;*
- (d) *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.*²⁵

While we recognise that not all States have ratified the *ILO Convention*,²⁶ the *ILO Declaration on Fundamental Principles and Rights at Work* makes it clear that:

'...all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: ...

²¹ *ILO Convention* art 7(1).

²² *ILO Convention* art 7(4).

²³ *ILO Convention* art 3(1).

²⁴ *ILO Convention Concerning the Prohibition and the Immediate Action for the Elimination of the Worst Forms of Child Labour* (No.182), open for signature 17 June 1999, 2133 UNTS 161, entered into force 19 November 2000, art 3 ('*ILO Worst Forms of Child Labour Convention*').

²⁵ *ILO Worst Forms of Child Labour Convention* art 3.

²⁶ The *ILO Worst Forms of Child Labour Convention* has received universal ratification.

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(c) *the effective abolition of child labour.*²⁷

As such, we argue that it is not the sovereign right of each country to specify a minimum age of admission to employment below that stipulated in the *ILO Convention*. Rather, all States have an obligation to take effective measures towards the abolition of child labour. Australia should enhance its international cooperation efforts to assist other States to achieve a minimum age of admission to employment in line with the *ILO Convention*, rather than undermining the implementation of its provisions by catering to non-compliant States.

Moreover, the distinction between 'child labour' and 'child slavery' within the Bill's framework lacks clarity. 'Child slavery' (as discussed in the EM) inherently constitutes the worst forms of child labour, as outlined in article 3 of the *ILO Worst Forms of Child Labour Convention*.

Definition of 'goods involving child labour'

In 2011, the United Nations Human Rights Council unanimously endorsed the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*.²⁸ The *UNGPs* are a leading authoritative, normative framework guiding responsible business conduct on human rights. Australia was a co-sponsor of the resolution that led to the adoption of the *UNGPs* in 2011. The *UNGP* framework is also reflected in other standards and legislation Australia has committed to implementing. For example, the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*,²⁹ and the *Modern Slavery Act 2018 (Cth)*, as highlighted by its Explanatory Memorandum:

"The mandatory criteria draw on terminology and concepts used in the business and human rights context, particularly in the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs). The Australian Government will encourage entities to make use of the

²⁷ *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up*, International Labour Conference 86th sess (adopted June 1998, amended 11 June 2022) 9 [2], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.

²⁸ United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

²⁹ Australian Human Rights Commission and UNSW Australian Human Rights Institute, 'At the crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia' (2021), <https://www.humanrights.unsw.edu.au/research/current-research/10-years-ungp-business-human-rights>.

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UNGPs and other relevant frameworks to help them identify, prioritise and respond to modern slavery risks.”³⁰

The *UNGPs* are founded on three pillars:

- The state duty to protect human rights;
- The corporate responsibility to respect human rights; and
- Access to remedy.

While the proposal of this Bill broadly demonstrates Australia's commitment to fulfilling its obligations under pillar one of the *UNGPs*, it is essential to ensure that such legislation aligns with global frameworks, particularly the standards outlined in the *UNGPs*.

The *UNGPs* expect that businesses respect all internationally recognised human rights. This responsibility extends across the value chain, so they must consider range of potential involvement. Businesses may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. The *UNGPs* set out a three-part continuum of involvement – cause, contribute, or directly linked – which companies should use to understand how they may be involved with human rights harms, including child labour, throughout their value chain. The nature of a business’ involvement in human rights harm also determines the manner in which they are expected to respond, including in relation to remediation.

Under section 54 of the Bill:

- (2) ... goods are not **goods involving child labour** only because the goods are packaged in packaging material or a container and the packaging material or container:
- (a) is obtained or produced using child labour; or
 - (b) is entirely or partially comprised of materials that are obtained or produced using child labour.

Furthermore, during the Minister’s Second Reading Speech, Senator Roberts states the Bill, ‘does not cover secondary touchpoints such as packaging, transport or machinery used in production.’³¹ The EM explains this is because, ‘[i]t is fair to require an importer to know where

³⁰ Explanatory Memorandum, *Modern Slavery Act 2018 (Cth)*, 127.

³¹ Customs Amendment (Preventing Child Labour) Bill 2023, Second Reading Speech.

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their materials came from, and who made their product. Beyond that it would be impractical to police.³²

However, we submit this is inconsistent with *UNGPs*.

Businesses cannot evade responsibility for human rights harms. Goods would still be considered to involve child labour if they are packaged in materials or containers that are made by child labour or contain materials obtained through child labour. A business would be involved with such human rights harm in their value chain, notwithstanding if it is impractical to police.

Consequently, regardless of legislative exemptions, businesses are expected to adhere to normative standards regarding their response and remediation efforts in addressing such harms. Anti-Slavery Australia believes that any legislation regarding business and human rights must closely align with the *UNGPs*. Consequently, the exemption for packaging material as a good involving child labour should be removed, and any future revisions to the Bill should refrain from including such exemptions in definitions.

Introduce a rebuttable presumption

Import bans targeting goods suspected of being produced through forced labour are a significant regulatory tool aimed at preventing or mitigating modern slavery within global supply chains. While the effectiveness of such bans remains a subject of debate, they nonetheless represent a tangible effort by governments to address forced labour.³³ The United States' implementation of import bans, particularly under the *Uyghur Forced Labor Prevention Act* (*UFLPA*) since 2022, serves as a prominent example. The *UFLPA* targets imports from China's Xinjiang region and assumes, unless proven otherwise, that these imports have been produced using forced labour (i.e., a rebuttable presumption).³⁴

³² Customs Amendment (Preventing Child Labour) Bill 2023, Explanatory Memorandum.

³³ Irene Pietropaoli, Owain Johnstone, and Alex Balch, Modern Slavery Policy and Evidence Centre (2021), *Policy brief: Effectiveness of forced labour import bans*. Available at: <https://modernslaverypec.org/assets/downloads/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf>

³⁴ *Uyghur Forced Labor Prevention Act* (2021)

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Between June 2022 and 2024 to date, a total of 3,262 shipments have been denied entry into the United States under the *UFLPA*.³⁵ It is also reported that the law is connected to a decline in demand of cotton from the Uyghur Region and is accelerating efforts for solar supply chain diversification.³⁶

However, the efficacy of import bans is contingent upon various factors, including their scope and enforcement strategies. Import bans can be resource-intensive to implement and manage, and their impact may vary depending on the affected market share.³⁷ For example, actions to issue a Withhold-Release Order (WRO) under the US *Tariff Act* can be time-consuming. A recent case involving the issuance of a WRO against palm oil and its products made by company FGV Holdings Berhad in Malaysia, required a year-long investigation to gather evidence indicating the use of forced labour.³⁸ Such exhaustive investigations are necessary but highlight the need for a more efficient approach.

Further, challenges persist in enforcement and compliance. Companies may attempt to circumvent import bans by creating alternative supply chains or engaging in practices like bifurcation, which do not fully align with international standards.³⁹

Under section 56 of the Bill:

(1) This section applies if an authorised officer reasonably suspects that goods imported, or intended to be imported, into Australia are goods involving child labour

³⁵ United States Customs and Border Protection, *Uyghur Forced Labor Prevention Act Statistics, June FY22 to FY24 to date*. <https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics> (Accessed 16 April 2024)

³⁶ Ji Siqu, South China Morning Post, *As China's cotton harvest begins, Xinjiang 'forced labour' law and global recession fears hobble demand* (7 October 2022). Online: <https://www.scmp.com/economy/china-economy/article/3195043/chinas-cotton-harvest-begins-us-xinjiang-forced-labor-law?module=hard_link&pgtype=article>; Anti-Slavery International, *What is the impact of the US Uyghur Forced Labor Prevention Act One Year On?* (26 June 2023). Online: <<https://www.antislavery.org/latest/uyghur-forced-labor-prevention-act-one-year-on/>>

³⁷ James Cockayne, the University of Nottingham Rights Lab (2022) *Making Xinjiang sanctions work: Addressing forced labour through coercive trade and finance measures*. Online: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/documents/xjaficm/making-xinjiang-sanctions-work.pdf>

³⁸ United States Customs and Border Protection (2020), *CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia*. Online: <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>

³⁹ Anti-Slavery International, Investor Alliance for Human Rights, and Helena Kennedy Centre for International Justice at Sheffield Hallam University (2024), *Respecting Rights in Renewable Energy: Investor Guidance to mitigate Uyghur forced labour risks in the renewable energy sector*. Online: <https://www.antislavery.org/wp-content/uploads/2024/01/ASI-HCIJ-IAHR-Investor-Guidance.pdf>

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(2) The authorised officer may, by written notice given to the importer of the goods, require the importer to give to the officer any information, or produce to the officer any documents, specified in the notice that are relevant to considering whether the goods are goods involving child labour.

This would require the importer of goods suspected of involving child labour to provide any information or documents that could help the authorised officer decide if child labour was involved in making those goods.

To be effective, Anti-Slavery Australia notes that the proposed section 56 would potentially necessitate the collection and verification of extensive documentation to determine the presence of child labour in the production of goods, likely making enforcement resource intensive and difficult. It would potentially require importers to provide detailed information on their supply chains, including for example, the origins of materials and the labour practices involved, which may be complex to ascertain. Additionally, the effectiveness of such measures may be hindered by the challenge in obtaining accurate and reliable information from suppliers, especially in regions with limited transparency and record-keeping. There are further inherent limitations in verifying the accuracy of the information provided by importers. Without robust mechanisms for monitoring and oversight, there is a risk that importers may provide incomplete or misleading information, undermining the effectiveness of import bans.

Acknowledging our previous recommendation for an altered scope of an import ban to capture forced labour and forced child labour (including the worst forms of child labour), and acknowledging the complexities involved, the proposed Bill could introduce a 'rebuttable presumption' in certain cases.

Anti-Slavery Australia proposes that authorities should have the discretion to impose broader import bans encompassing entire companies, sectors, or regions when there is compelling evidence of widespread forced labour and forced child labour. This would operate similarly to rebuttable presumptions under the *UFLPA* and assist in alleviating some of the administrative burden that may be present in determining goods made with child labour under the proposed Bill.

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Make penalties stronger

Sliding scale of penalties

Anti-Slavery Australia believes that implementing a sliding scale of penalties may weaken the deterrent effect of the legislation. Without significant consequences for non-compliance from the outset, importers may perceive the penalties as manageable risks rather than strong deterrents against engaging in child labour practices.

The use of a sliding scale of penalties based on time of compliance contradicts international standards and frameworks aimed at combating child labour. International conventions, such as the *ILO Convention No. 138: Convention concerning Minimum Age for Admission to Employment* and the *Convention on the Rights of the Child*, emphasise the urgency of eliminating child labour without delay. By imposing penalties dependent on time taken to comply with a notice, the proposed legislation may undermine the sense of urgency required to address this human rights issue effectively.

Additionally, it may inadvertently incentivise importers to delay compliance efforts until they approach the threshold for higher penalties. Importers may perceive the initial penalties as relatively lenient and choose to postpone necessary changes to their supply chains.

Automatic ban after 48 months

Allowing importers up to 48 months to comply with regulations before facing an automatic ban raises concerns about the potential for prolonged use of child labour. Importers may exploit this leniency to continue benefiting from goods produced through child labour, further perpetuating harm to vulnerable children.

Rather, Anti-Slavery Australia recommends that consideration be given to the introduction of WROs. Such an approach would enable authorised officers to withhold shipments if it reasonably suspects of involving forced labour and forced child labour, placing the onus on importers to demonstrate the absence of such for entry into Australia.

Civil penalties

Implementing civil penalties without criminal repercussions may raise concerns about the adequacy of deterrent measures to ensure compliance with child labour regulations. In

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cases where civil penalties equate to less than the total value of goods imported, importers may still perceive the potential profit from non-compliance as outweighing the risk of penalties. This could undermine the effectiveness of enforcement efforts and fail to sufficiently deter importers from engaging in child labour practices.

Without the threat of criminal prosecution, importers may view civil penalties as merely a cost of doing business rather than a serious consequence for violating human rights. In situations where the financial gain from exploiting child labour exceeds the potential penalties, importers may prioritise profit over ethical considerations, perpetuating the cycle of exploitation.

Moreover, calculating penalties based on the value of the goods may not accurately reflect the severity of the violation or the harm caused by child labour. This approach may disproportionately penalise importers of high-value goods while inadequately addressing the underlying issue of exploitation. Instead, penalties should be proportionate to the seriousness of the offense and the harm inflicted, irrespective of the economic value of the imported goods, in line with the *UNGPs*.

Additionally, Anti-Slavery Australia contends that this approach may incentivise businesses to evade responsibility by abandoning imports and suppliers, leaving victim-survivors of child labour without recourse. Businesses found to have engaged in such practices should be obligated to remediate victim-survivors, including children, and address the root causes within their supply chains. This includes ensuring access to education, healthcare, psychological support, and family reunification where applicable.

Publication of information about notices and non-compliance

Under section 57D of the Bill:

(1) The Secretary of the Department may, on a website maintained by the Department, publish:

(a) if an authorised officer has given a notice under section 56 or 57 to an importer—details of the notice, including the identity of the importer; or

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- (b) if the Secretary is reasonably satisfied that an importer has contravened subsection 55(1)—details of the contravention, including the identity of the importer; or*
- (c) if the Secretary is reasonably satisfied that an importer has contravened paragraph 233(1)(b) in relation to goods imported into Australia in the circumstance covered by section 51B—details of the contravention, including the identity of the importer.*

The justification for penalties stems from the belief that the publication of information about notices and non-compliance (i.e., "naming and shaming") will serve as a useful tool in combating businesses importing goods involving child labour. This approach is based on the premise that public disclosure of non-compliant importers will not only hold them accountable for their actions but also act as a deterrent for others, thereby contributing to the broader effort of eradicating child labour from global supply chains.

Brazil has maintained its practice of updating its slave labour "Dirty List" biannually since its inception in 2004.⁴⁰ However, updates to the list faced a temporary suspension after a real estate business association filed a lawsuit against the government in 2014, claiming that the list's publication constituted an unconstitutional exercise of executive power. Despite the Supreme Court of Brazil rejecting this assertion in 2020,⁴¹ various challenges persist, diminishing the ongoing effectiveness of the list.

While public exposure of companies involved in exploitative labour practices can indeed harm their reputation, brand image, and market value, prompting them to address these issues, the same is true that the effectiveness of disclosure depends on factors like the accuracy of disclosed information, public awareness, and the regulatory environment. Public disclosure can also lead to unintended consequences such as stigmatisation, whistleblower retaliation, or the relocation of forced and child labour to less regulated sectors.

⁴⁰ University of Nottingham Rights Lab 2019, *Tackling slavery in supply chains: lessons from Brazilian-UK beef and timber*, University of Nottingham.
<https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2019/march/tackling-slavery-in-supply-chains.pdf>.

⁴¹ Teixeira, F 2020, 'Brazil court rules in favor of anti-slavery 'dirty list'', Reuters, 15 September.
<https://www.reuters.com/article/uk-brazil-trafficking-dirtylist-idUKKBN2653AF>.

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Develop an annual compilation of high-risk goods

Anti-Slavery Australia recommends that any authorised officer be appropriately trained and provided with clear resources on when and how to comply with proposed section 56(1): ... *if an authorised officer reasonably suspects that goods imported, or intended to be imported, into Australia are goods involving child labour.* This includes if the scope of such Bill is amended to capture forced labour and forced child labour.

To this end, the Australian Government should compile an annual list of high-risk goods and their source countries which it has reason to believe are produced by forced and child labour in violation of international standards. Currently, Australian business and civil society are guided by the annual list published by the US Department of Labor to inform consideration of potential links to modern slavery in international supply chains. This list should then guide authorised officers on when they should 'reasonably suspect' that goods involve child labour.

Explore complementary legislative approaches

There is a clear global trend among governments since the endorsement of the *UNGPs* in 2011 to strengthen the expectation of businesses to respect human rights through legislation.

Other human rights laws

There are currently three major types of legislation in place to address business and human rights: transparency reporting regimes, mandatory human rights due diligence, and customs or import bans.

Transparency reporting regimes:

Various countries have passed laws requiring businesses to report on their efforts to address human rights issues like modern slavery. Examples include Australia's *Modern Slavery Act 2018 (MSA)*,⁴² California's *Transparency in Supply Chains Act 2011*,⁴³ and the UK's *Modern Slavery Act 2015*.⁴⁴ These laws prioritise reporting over mandating specific risk management

⁴² *Modern Slavery Act 2018 (Cth)*

⁴³ State of California (2010) *California Transparency in Supply Chains Act*.

⁴⁴ Government of the United Kingdom (2015) *Modern Slavery Act*.

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actions. Specifically in relation to child labour, reporting legislation includes Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act*,⁴⁵ effective from January 2024.

Mandatory Human Rights Due Diligence:

Another legislative approach mandates human rights due diligence obligations within domestic law, requiring businesses conduct human rights due diligence across their operations and supply chains to identify and address adverse human rights impacts. Certain regulations target specific issues, such as the EU *Conflict Minerals Regulation* and the US *Dodd-Frank Act section 1502*.⁴⁶ Conversely, laws such as France's *Duty of Vigilance Law 2017*,⁴⁷ Norway's *Transparency Act 2022*,⁴⁸ Germany's *Act on Corporate Due Diligence Obligations in Supply Chains 2023*,⁴⁹ and the recently passed EU *Corporate Sustainability Due Diligence Directive (CSDDD)* cover a wider spectrum of internationally recognised human rights.⁵⁰ Several laws mandating human rights due diligence offer public enforcement powers or civil remedies.⁵¹ In relation to child labour, mandatory human rights due diligence legislation includes the Netherlands' *Child Labor Due Diligence Act* and Switzerland's *Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labor*.⁵²

Customs or import bans:

Some countries are employing customs and import controls as a legislative measure to curb the entry of goods into their markets if there are reasonable grounds to suspect that they may be linked to adverse labour rights impacts, such as forced labour. The United States

⁴⁵ Parliament of Canada (2023) *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*.

⁴⁶ EU Conflict Minerals Regulation (2017). *Regulation 2017/821*; United States Congress, Section 1502, *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

⁴⁷ France Law No. 2017-399 (2017) *Duty of Vigilance of Parent and Instructing Companies*.

⁴⁸ Government of Norway (2022) *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions*.

⁴⁹ Federal Government of Germany (2021) *The Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten)*.

⁵⁰ Jon McGowan, Forbes (15 March 2024), *After Delays, EU Approves Corporate Sustainability Due Diligence Law*

⁵¹ France Law No. 2017-399 (2017) *Duty of Vigilance of Parent and Instructing Companies*.

⁵² Kingdom of the Netherlands, Ministry of Foreign Affairs (2019) *Child Labor Due Diligence Act (Wet zorgplicht kinderarbeid)*; Swiss Federal Council (2021), *Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour*

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was the first country to actively enforce this type of measure, amending the *Tariff Act of 1930* to authorise US customs officials to issue Withhold Release Orders, detaining goods at the border that are suspected of being produced using forced labour.⁵³ More recently, the US broadened its approach through the *Uyghur Forced Labour Prevention Act*.⁵⁴

In January 2020, the US, Canada and Mexico agreed to prohibit the import of goods produced by forced labour as part of the US-Mexico-Canada Free Trade Agreement.⁵⁵ Canada introduced amendments to its *Customs Tariff* to prohibit the importation of goods manufactured or mined with forced labour. In 2023, the *Customs Tariff* was amended further to prohibit the importation of goods manufactured or mined with child labour.⁵⁶ Further, in April 2024, the European Parliament gave final approval to the EU Forced Labour Regulation.⁵⁷

Move to mandatory human rights due diligence

Globally, there is an increasing trend towards the introduction of mandatory human rights due diligence legislation. Notably, these laws are generally founded on, or otherwise aligned with, the key principles of the *UNGPs*. Human rights due diligence laws have the potential to benefit both rights-holders and businesses by offering consistent frameworks that encourage stronger and more transparent efforts to respect human rights. The *UNGPs* state that in order to respect human rights, businesses are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights.

In March 2022, the Australian Government launched a review of the *MSA* to assess its effectiveness and compliance. Professor John McMillan AO, leading the review, presented the report to Parliament in May 2023. The report included 30 recommendations. Among

⁵³ *Tariff Act of 1930* (19 U.S.C. §1307).

⁵⁴ *Uyghur Forced Labor Prevention Act* (2021)

⁵⁵ Article 23.6, *Agreement between the United States of America, the United Mexican States, and Canada* (2020).

⁵⁶ Government of Canada (2023) *Customs Tariff* (S.C. 1997).

⁵⁷ European Parliament, Press Release, *Products made with forced labour to be banned from EU single market* (2024), <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20551/products-made-with-forced-labour-to-be-banned-from-eu-single-market>

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these was a recommendation for the introduction of a requirement that companies have a modern slavery due diligence system in place.⁵⁸

Moreover, in some instances, Australian businesses operating in overseas jurisdictions are already captured by mandatory human rights due diligence laws. These laws are also likely to have a wider, indirect impact on Australian businesses, including by shaping investor, corporate customer and civil society expectations.

While we do not propose in this submission that mandatory human rights due diligence legislation is inherently superior to customs or import bans, it is important to recognise that such bans alone are insufficient for businesses to fulfill their obligations under the *UNGPs*. To this end, the proposed Bill must complement other frameworks and approaches to ensure comprehensive adherence to human rights standards. From the perspective of business obligations, it should be regarded as one component of a broader strategy aimed at eradicating child labour and modern slavery.

5. Conclusion

For the reasons outlined above, it is our view that the Bill does not align with international standards. Anti-Slavery Australia therefore recommends the Bill be passed only after certain amendments are made.

In summary, our recommendations are as follows:

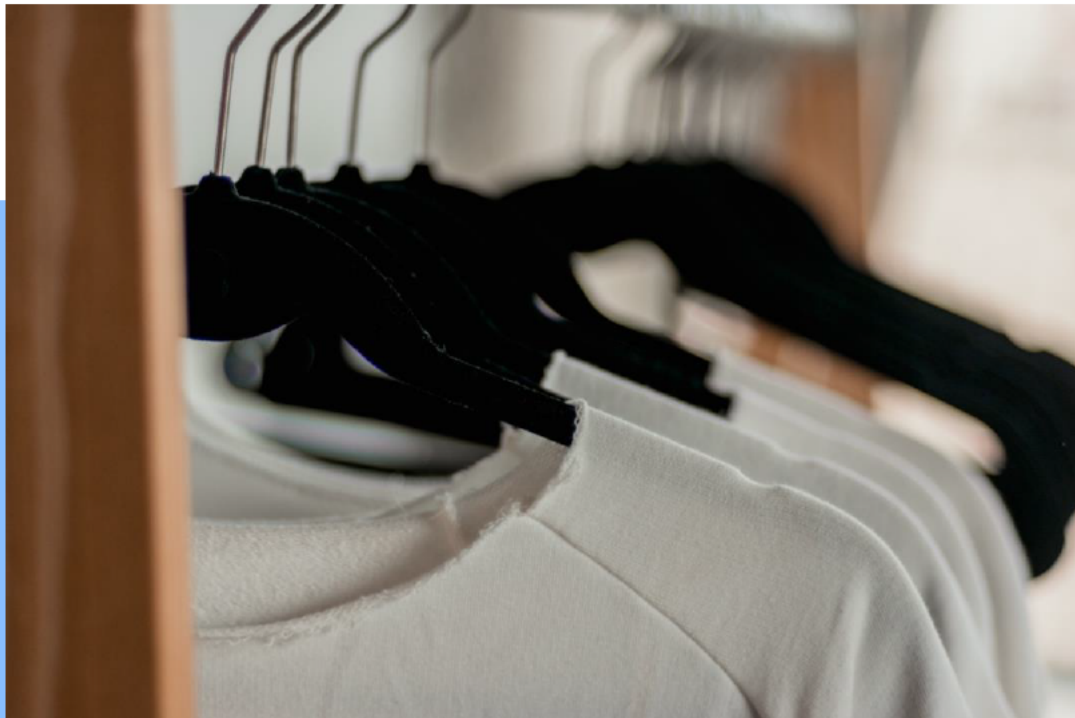
- **Broaden the scope of the import ban:**
 - Amend the scope to include forced labour and forced child labour (capturing the worst forms of child labour).
 - Harmonise definitions with international standards.
- **Introduce a rebuttable presumption:**
 - Consider a rebuttable presumption for goods suspected of being produced through forced labour and forced child labour, and allow authorities to impose broader import bans based on compelling evidence.

⁵⁸ Professor John McMillan AO (2023) *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*. Available at: <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF>

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- **Make penalties stronger:**
 - Avoid implementing a sliding scale of penalties.
 - Consider introducing the power to issue Withhold-Release Orders.
 - Consider whether civil penalties alone are sufficient.
 - Do not calculate penalties based on the value of the goods alone.
 - Consider whether publishing information about notices and non-compliance to is sufficient to deter importers.
- **Develop an annual compilation of high-risk goods:**
 - Compile an annual list of high-risk goods and their source countries likely produced by forced labour and forced child labour.
 - Train authorised officers and provide clear resources for compliance.
- **Explore complementary legislative approaches:**
 - Consider other legislative approaches such as mandatory human rights due diligence legislation, to complement import bans.



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