



Vietnamese Overseas Initiative for Conscience Empowerment AUSTRALIA

ABN 15 625 886 946

19 January 2021

Senate Foreign Affairs, Defence and Trade Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senate Foreign Affairs, Defence and Trade Legislation Committee,

Inquiry into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020

Vietnamese Overseas Initiative for Conscience Empowerment (VOICE) Australia is a non-profit organisation with the mission to improve the human rights situation in Vietnam by strengthening civil society and the rule of law in the country through capacity building, advocacy, civil society support and refugee resettlement.

VOICE Australia welcomes the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee to inquire into the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020.

Forced labour has occurred in China, particularly in China's Xinjiang Uighur Autonomous Region (XUAR) for many years. The Uyghurs living overseas are reluctant to raise these issues due to the fear of retaliation against themselves or their family in Xinjiang. It was not until 2018 that reports emerged of surveillance, arbitrary detention and forced indoctrination targeting Uighurs, Kazakhs and other predominantly Muslim ethnic groups in XUAR.¹

The definition of forced labour

The definition of forced labour under the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020 has the same meaning under the Criminal Code Act 1995. Section 207.6 of the Criminal Code defines forced labour as:

*“the condition of a person (the **victim**) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:*
(a) to cease providing the labour or services; or
(b) to leave the place or area where the victim provides the labour or services.”

It applies whether the coercion, threat or deception is used against the victim or another person.

¹ <https://www.amnesty.org/download/Documents/ASA1791132018ENGLISH.PDF>, pg 5.

The definition of forced labour shall include the use of forced labour imposed by a State as a means of racial, religious or other discrimination.²

The circumstance of forced labour in XUAR is unique. It is the Chinese Communist Party's action to punish the minority groups in the name of “vocational education”; therefore, it is crucial to include forced labour imposed by a State due to the racial, religious or other discrimination.

Persons benefiting from forced labour

The Australian Strategic Policy Institute published a report³ identifying over 80 foreign and Chinese companies allegedly benefiting directly or indirectly from the use of Uyghur workers outside XUAR through workers transfer programs. The report estimates at least 80,000 Uyghurs were transferred out of Xinjiang and assigned to factories across China since 2017. It involves a range of supply chains including electronics, textiles and automotive supplying goods overseas.

Australia has indirectly benefited from the forced labour of Uyghurs workers through CRRC, a Chinese state-owned rail manufacturer.⁴ The Victorian Government entered into a public-private partnership agreement with the Evolution Rail consortium for the High Capacity Metro Trains (HCMT) Project in November 2016. The consortium comprises Plenary Group, Downer Group, and CRRC Changchun Railway Vehicles (a division of the CRRC). 65 of the 7-car trains will be delivered in 2023.⁵

The Victorian Premier, Mr Daniel Andrews was questioned about the state rail manufacturers' connection with forced labour. Mr Andrews advised that the State has received assurance from the company that forced labour is not being used to build Victoria's new trains.⁶ However, KTK Group has been blacklisted by the US Department of Commerce for its involvement in forced labour⁷, and KTK Group listed CRRC as one of its partners⁸. A mere reassurance from a company is an appalling action or omission by a State government in its effort to combat forced labour.

Entities using forced labour in their supply chain must be blacklisted and banned from importing goods and services into Australia. The Australian Border Force (ABF) is to publicly name and shame the entities to deter others from being involved in such act of human rights abuse. The ABF is to publish the blacklist of companies involved in forced labour on its website. This way, Australian entities can search the database before entering into trade agreements with foreign entities. The blacklist can be shared with like-minded countries like the US.

The Australian Government has taken a global leadership role in combating modern slavery by introducing the Modern Slavery Act 2018 to address the conduct of entities occurring overseas where it forms part of the supply chains of Australian goods or services. Whether local, state or federal government must lead by example and conduct its due diligence before entering into a trade agreement with any entities to ensure that such entity respect human rights including rights to be free from forced labour.

² Article 1 of the Abolition of Forced Labour Convention 1957

³ Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang

⁴ <https://www.aspistrategist.org.au/uyghurs-for-sale-re-education-forced-labour-and-surveillance-beyond-xinjiang/>

⁵ <https://www.dtf.vic.gov.au/partnerships-victoria-ppp-projects/high-capacity-metro-trains-project>

⁶ <https://www.abc.net.au/news/2020-10-05/daniel-andrews-victoria-train-contract-with-china-crrc-company/12732142>

⁷ <https://www.commerce.gov/news/press-releases/2020/07/commerce-department-adds-eleven-chinese-entities-implicated-human>

⁸ <http://en.ktk.cc/products/partner/>



Vietnamese Overseas Initiative for Conscience Empowerment AUSTRALIA

Although we rely on the honesty and transparency of entities and our trading partners, reassurance is not enforceable. Therefore, an entity must provide certification or guarantee that their company is not involved in forced labour in their supply chain and through their partners. The entities will be banned from importing goods or services into Australia and compensate the Australian entities for the breach of guarantee or providing incorrect/false/misleading certification. The onus of proof is on the foreign entity to show that they are not involved in forced labour as the due diligence of the Australian entity alone is not enough to address forced labour.

Any Australian entity knowingly benefiting from forced labour shall be punished under Section 233 of the Customs Act 1901. Any officer or employee of a corporation knowingly causing an entity to be involved in forced labour shall be referred to the Australian Securities and Investments Commission for the breach of their duties under the Corporations Act 2001.

The section 4 of the Customers Act 1901 defines an owner as any person (other than an officer of Customs) being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods. It should extend to include entities and federal, state and local governments.

Our recommendations

1. The definition of forced labour shall include the use of forced labour imposed by a State as a means of racial, religious or other discrimination.
2. Entities involved in forced labour must be banned from importing goods or services into Australia, and a blacklist is to be published on the ABF website.
3. Foreign entities must provide certification or guarantee as evidence that their entity is not involved in forced labour. Any breach of certification or guarantee will lead to the entity being banned from importing goods or services into Australia and the Australian entity to be compensated for such breach.
4. Extend the definition of owner under section 4 of the Customs Act 1901 to include entities and federal, state and local governments.

VOICE Australia supports the passing of the Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020 and asks that the Committee considers our recommendations in your report to Parliament.

Yours sincerely,

Janice Le
Director of Advocacy
VOICE Australia