

Submission to Inquiry

Customs Amendment (Preventing Child Labour) Bill 2023

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Be Slavery Free and signatories of this submission welcomes the Inquiry into the Customs Amendment (Preventing Child Labour) Bill 2023 ('the Bill'). We wish to thank Senator Roberts for this very timely and important Bill. The proposed legislation is an important step towards preventing and eradicating child labour. An estimated 160 million children are engaged in child labour around the world, and almost half of them (79 million) performing hazardous work that may constitute modern slavery.¹

¹ International Labour Organization (ILO), "Child Labour: Global estimates 2020, trends and the road forward" accessed 18 April, 2023, https://www.ilo.org/ipecc/Informationresources/WCMS_797515/lang-en/index.htm.

About Be Slavery Free

Be Slavery Free is a coalition of 18 member organisations. It aims to stop slavery by changing demand and supply. This is done by raise awareness with business and consumers, campaigning for the strengthening of legislation and regulations in order to make it more risky and less lucrative for those utilising modern slavery. As slavery is a global problem, our work starts in Australia, but extends to include partnerships with other organisations and businesses around the world, especially in the Asia-Pacific region to achieve systemic and lasting change. We work to educate those who have power to end slavery – business, consumers, media, academics, civil society and governments – because we recognise that ending modern slavery is a shared responsibility.

Be Slavery Free is invested in the development of an effective and pragmatic modern slavery legislative landscape in Australia that produces results for people who are caught in, or at risk of being caught in, situations of modern slavery.

Our research² shows that Australians' awareness of modern slavery is growing and so are their expectations of government. 7 in 10 Australians believe the Government has a responsibility to ensure that products made with modern slavery are banned from the Australian market.

Experience in Addressing Issues of Child Labour

For over 15 years, Be Slavery Free has been deeply involved in the cocoa industry, which is notorious for its issues with child labour.³ A report from 2020 revealed that in Ghana and Côte d'Ivoire alone, which account for over 70% of global cocoa production, 1.48 million children were exposed to at least one form of hazardous child labour in cocoa farming.⁴ Through initiatives like the Chocolate Scorecard,⁵ our work in the chocolate industry has provided us with a comprehensive understanding of child labour, encompassing perspectives from cocoa farmers, producing nations, chocolate manufacturers, global civil society, regulatory bodies, and the end consumers. Based on our extensive experience, we firmly believe that all stakeholders have a crucial role to play in eradicating child labour.

² The Australian Ethical Consumer Report, Exploring the ethical attitudes and consumption behaviours of Australians, <https://www.beslaveryfree.com/ethical-consumer-report>, Baptist World Aid Australia, Be Slavery Free and McCrindle Research 2023

³ For more information, please visit www.beslaveryfree.com and www.chocolatescorecard.com

⁴ The Nonpartisan and Objective Research Organization (NORC) at The University of Chicago, 2020 https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf

⁵ Be Slavery Free, www.chocolatescorecard.com

Having worked on the particular issue of child labour for 19 years, we know that there is no silver bullet for ending child labour. We also know the right legislation can support the important role Governments have in ending these heinous crimes. Some of the issues include:

- Proving the actual age of a child, particular in contexts where birth certificates are rare
- Ensuring that families are not punished or pushed into further poverty because they are no longer able to have their children work and no replacement income has been provided
- Corruption is rife and entire industries of faking a child's birth documents or providing mis-leading medical certifications of age (using tools such as dental development)

Any legislation to address child labour must be accompanied by holistic international development strategies including adequate education, and replacement incomes.

Clearer Definition of Child Labour

With an estimated 160 million children worldwide engaged in child labour,⁶ urgent action is imperative. Australia's primary connection to child labour lies in imports, totalling over AUD 26.5 billion in products at risk of being made with forced labour, including forced child labour.⁷ The Bureau of International Labor Affairs (ILAB) (part of the US Department of Labor) maintains a list of goods and their source countries which it has reason to believe are produced by child labour or forced labour in violation of international standards.⁸ It lists 159 goods from 78 countries or regions.

⁶ See Footnote 1

⁷ Global Slavery Index, <https://www.walkfree.org/global-slavery-index/country-studies/australia/>

⁸ US Department of Labor, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>



Source US Department of Labor https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf Figure 5, page 29.

With the scale of child labour as it is, identifying a supply chain which is child labour free would be the exception. Hence, the vast majority of importers would need to review their supply chains should imports made with child labour be banned from entering Australia.

While we commend the efforts of the Bill to combat this issue by prohibiting such imports, we recognise the need for a clear and enforceable definition of child labour to achieve more effective outcomes.

Child Labour and all its forms⁹

We recognise that a child in school is a child who is NOT involved in the forms of child labour listed below. The linkage between school attendance and ending child labour is vital and often used as a tactic by business and international development agencies for monitoring the success of their impact in ending child labour. Monitoring school attendance is a positive pathway.

⁹ ILO, <https://www.ilo.org/ipecc/facts/lang--en/index.htm>

Child Labour	Worst Forms of Child Labour ¹⁰	Hazardous Child Labour ¹¹
<p>Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that:</p> <ul style="list-style-type: none"> • is mentally, physically, socially or morally dangerous and harmful to children; and/or • Interferes with their schooling <p>Whether or not particular forms of “work” can be called “child labour” depends on the child’s age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as</p>	<p>Work that involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities. It includes:</p> <ul style="list-style-type: none"> • All forms of slavery or practices similar to slavery; • The use, procuring or offering of a child for prostitution, pornography • The use, procuring or offering of a child for illicit activities • Work which by its nature or circumstances is likely to harm the health, 	<p>One of the worst forms of child labour, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Hazardous child labour is work that:</p> <ul style="list-style-type: none"> • exposes children to physical, psychological or sexual abuse; • work underground, under water, at dangerous heights or in confined spaces; • uses dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; • is in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

¹⁰ ILO, C182 – Worst Forms of Child Labour Convention, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹¹ ILO, R190, Worst Forms of Child Labour Recommendation, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31252

<p>well as among sectors within countries.</p>	<p>safety or morals of children</p>	<ul style="list-style-type: none"> • is under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.
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Enforceability

Legal actions relating to cases of child labour have been dismissed due to a lack of a “traceable connection” between the products companies are importing and the places where children are labouring and experiencing child labour, worst forms of child labour and hazardous child labour conditions.¹² Similarly, legislation relating to the banning of products made with child labour have proven lacking in enforceability because of the size and scale of the problem and difficulty in proving a child’s age (see above).

To enhance enforceability, we recommend adopting the narrower definition of forced child labour outlined in Article 3 of the Convention on Worst Forms of Child Labour, 1999.¹³ This definition targets practices such as slavery, trafficking, forced labour, prostitution, pornography, and involvement in illicit activities, safeguarding children's well-being without inadvertently exacerbating vulnerabilities.

Additionally, we suggest utilising the UN Convention on Minimum Age, 1973¹⁴ which is designed to ensure effective abolition of child labour by raising progressively the minimum age for admission to employment or work. 176 countries have ratified this Convention.¹⁵ Article 2.3 advises that minimum age should not be less than the age of completion of compulsory schooling and in any case, shall not be less than 15 years. The Convention requires ratifying countries to submit an action plan to progressively raise the working age

¹² See for example <https://www.reuters.com/business/hershey-nestle-cargill-win-dismissal-us-child-slavery-lawsuit-2022-06-28/>

¹³ ILO, C182 – Worst Forms of Child Labour Convention, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹⁴ ILO, C138 – Minimum Age Convention, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO

¹⁵ Only 11 countries have not ratified C138

to 18. Using this protocol allows for the enforcement to be in line with the specific commitments of those countries.¹⁶

Establishing the Provenance of Products

For this legislation to be enforceable, the Australian Government should produce a list of goods, services and jurisdiction where forced and child labour are of high-risk. At the moment, every entity required to report under the Modern Slavery Act, mandatory or voluntary, is doing their own risk assessment to identify high-risk regions, industries, services and products. The Commonwealth itself also needs to undertake its own risk assessment in relation to these matters. Our experience is much of energy is being invested in the risk assessment process and very few entities are actually getting to a place of identifying their role in preventing and mitigating modern slavery practices. Current data and systems to identify these products are either very generic (and hence limited in their use) and based on the data of other jurisdictions or very expensive to subscribe to. We believe that in matters relating to human rights the necessary data should be available on an equitable basis and not just to those who can afford it. Once this list is developed, entities will be clearer of where to address forced labour.

In the last 5-10 years the scientific tools for verifying supply chain connections have been developed which enable two key questions to be answered:

1. Where exactly does the product or its raw ingredients come from?
2. What is happening in relation to labour conditions on that farm or fishing boat or in the factory?

Source Certain through TSW Trace[®] and NGO's Be Slavery Free, The Mekong Club, Unseen and Blue Number through MillionMakers[™] have develop tools which can answer the above questions.

¹⁶ Our experience of working in India for example is that different states and different national Acts use different definitions of a child. This makes applying a definition almost impossible. C138, offers a clearer way forward.

<p>Source Certain¹⁷</p> <p>Every material, whether natural or synthetic, carries a unique chemical signature that has been imposed on it by the environment either where it was grown or by its production or manufacturing process. This unique chemical signature enables that material to be traced back to where it was grown, produced or manufactured (i.e. its provenance).</p> <p>Source Certain is an Australian company who has developed TSW Trace®. The technology is a game changer in identifying the provenance of a product. It comprises methodologies, processes and procedures that utilise various laboratory equipment, together with expert data interpretation systems and a scientific database accumulated over an extensive period of time to determine provenance with specificity beyond just country or region of origin, to mine, farm, orchard, shed or pond.</p>	<p>MillionMakers™¹⁸</p> <p>Is a direct worker voice tool which enables workers to anonymously answer questions about the farm, factory or fishing boat where they work. These answers correlate to the ILO Indicators of Forced Labor.¹⁹ Workers are paid and license their data through MillionMakers™ to provide aggregated data of the ethical and sustainable claims being made. It is a breakthrough tool to identify forced and child labour risks and the actions required to end modern slavery in supply chains.</p> <p>Now being used in factories, farms and processing factories across the global, it offers data like we have never seen before for evidence-based reporting to regulators, government, shareholders, NGO's customers and consumers.</p>
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Using a combination of:

- Strong legislation banning products made with forced and child labour from entering Australia
- a list of goods and their source countries which there is reason to believe are produced by child labour or forced labour in violation of international standards, (similar to the one produced by the US Department of Labor (outlined above))
- in conjunction with new technologies that can ascertain the provenance of source materials to the place where they were grown, fished or made and

¹⁷ Source Certain, <https://www.sourcecertain.com/>

¹⁸ MillionMakers, <https://millionmakers.org/>

¹⁹ ILO, <https://www.ilo.org/publications/ilo-indicators-forced-labour>

- the assessment of labour conditions in those sourcing countries and industries in those locations

We have a chance at identifying forced labour and ending it.

Unintended Consequences

We are concerned of potential unintended consequence of a name and shame approach as suggested in the Bill.

Alternative to Shutdowns

In 2015, The Associated Press reported that major Australian supermarkets had been implicated in cases of child labour and human trafficking in shrimp peeling sheds in Thailand.²⁰ There were media and consumer calls for the sheds to be closed immediately or the company would be boycotted. Fortunately, in this case, the supplier understood what would happen if those sheds (which they did not own) were simply closed. Hundreds, if not thousands of children would end up on the streets of Bangkok, possibly even more vulnerable than they were in the sheds. The sheds were closed; but through a process where the workers were provided with alternative employment options and the children provided with child-care and education options and reunification with family if possible.

Global Actions

Major markets are banning the importation of such goods into their jurisdictions. For Australian businesses who are not using forced or child labour to remain competitive in Australia, such a ban is essential for creating the level playing field for business the Modern Slavery Act (Cth 2018)²¹ sought to achieve. We are at risk of becoming a dumping ground for products made with forced and child labour which will be banned from entering the United States, Canada, Mexico and the European Union.

²⁰ The Associated Press, <https://www.ap.org/news-highlights/seafood-from-slaves/2015/global-supermarkets-selling-shrimp-peeled-by-slaves/>

²¹ Federal Register of Legislation, <https://www.legislation.gov.au/C2018A00153/asmade/text>

United States of America

The US has mechanisms which use a 'rebuttable presumption' approach to enforce US laws to stop the entry of goods produced with forced labour and indentured child labour.²² The purpose of such legislation is said to be to create a level playing field for US businesses using ethical practices in their supply chains and procurement. The US Uyghur Forced Labor Prevention Act (2021) specifically imposes importation limits on goods produced using forced labour in China, especially the Xinjiang Uyghur Autonomous Region. Customs and Border Protection (CBP) implements Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) through issuance of Withhold Release Orders (WRO) for any product suspected of using forced or child labour. In FY2024, 2831 shipments were seized.

European Union

On 23 April 2024, the EU reached an agreement on an EU's 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. Member state authorities and the European Commission will be able to investigate suspicious goods, supply chains, and manufacturers. If a product is deemed to have been made using forced labour (including child labour), it will no longer be possible to sell it on the EU market (including online) and shipments will be intercepted at the EU's borders.

United Kingdom

A legal petition has been filed under the UK Global Human Rights Sanctions Law (GHR) to implement sanctions against seven Chinese seafood processing companies allegedly using forced labour. (4 March 2024)

These legislation address both forced adult and child labour.

²² US Department of Customs and Border Control, <https://www.cbp.gov/trade/programs-administration/forced-labor>

²³ European Council, <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20551/products-made-with-forced-labour-to-be-banned-from-eu-single-market>

Approaches to addressing modern slavery

Case Study: Children at work on cocoa farms

In the two biggest cocoa growing countries of Côte d'Ivoire and Ghana, cocoa is mostly grown in smallholder farms owned by farming families. Children in these families often contribute to farm work, either for survival or when their parents are unable to work due to age or illness.

The primary cause of child labour on cocoa farms is farmer poverty. Their parents are not bad parents; they are simply trying to survive. They make daily choices between sending their children to school and seeking to provide them with enough food. These are choices no parent should ever have to make. It is nefarious that a product used as a treat for so many children around the world, has a business model which keeps children in extreme poverty to provide the most essential ingredient. Meanwhile, other players in the supply chain are amongst the wealthiest people in the world.

Addressing the root cause of child labour is essential, as merely addressing its symptoms will not lead to lasting change. 23 years after the first reports of child labour on cocoa farms first surfaced, systemic approaches are contributing to increased income for farmers, quality education, health care, sector jobs for young adults and gender support for girls / women have begun to yield positive outcomes.

Preferred Approach

It is suggested that the enforcement of the Bill can be via organisations who track goods involving child labour reporting such instances to Australian Border Force. As one of the organisations who undertakes work that could be used in this way, we do not see it as our primary mission to provide the evidence to enforce government legislation relating to business practices in supply chains. Whilst NGO's have a role to play, they should not be relied upon; especially if their work is not funded by the Government.

Our mission is to end modern slavery (including forced, hazardous and worst forms of child labour) through driving change in government policy and business practice. We work with other stakeholders to address the underlying drivers such as poverty, irregular work conditions, use of migrant and foreign labour forced and social and environmental impacts such as war and climate change.

Be Slavery Free advocates for a ban on all products made with forced labour, rather than focusing on just child labour. We believe that with major markets and jurisdictions focussing on forced labour (including forced child labour) it is imperative for Australia to at least keep up with global trends. It also offers a unique opportunity to share data and intelligence between jurisdictions rather than to duplicate effort.

With an estimated 28 million people that experience forced labour in the world²⁴, banning goods produced with forced labour (including forced child labour) will be a commendable step in Australia's response to this heinous crime.

Recommendations

1. Amend the Australian Customs Act 1901 to prohibit the import of services and goods made wholly or in part with forced labour (including forced child labour)
2. Empower the Australian Border Force to be able to issue 'rebuttable presumptions' for specific goods, companies and/or regions identified by the government as having a high risk of being associated with forced labour
3. Amend the Modern Slavery Act (Cth 2018) to provide that the Minister or the Anti-Slavery Commissioner make a written declaration of the jurisdictions, products and services regarded as carrying a high modern slavery (including forced labour and forced child labour) risk²⁵

²⁴ Global Slavery Index, <https://www.walkfree.org/global-slavery-index/>

²⁵ Report of the statutory review of the Modern Slavery Act 2018 (Cth), recommendation 27, <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF>

Signatories

Organisations

ACRATH – Australian Catholic Religious Against Trafficking in Humans

Anglican Church, Grafton Diocese

Baptist World Aid / Transform Aid International

Be Slavery Free

Ethical Partners Funds Management

Etiko

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Child Labor

Efforts to reduce child labor are increasing.

Child labor practices are improving, which is encouraging after 23 years of concerted efforts! Despite the complexity and challenges involved, there has been a noticeable increase in efforts to address this issue. Policies are in place in most companies, and through the work of groups like the International Cocoa Initiative (ICI) and initiatives like Child Labor Monitoring and Remediation Systems (CLMRS) and others, these are beginning to yield positive results.



However, there is still a way to go to its elimination

The root causes are widely recognised – the dominant but not exclusive one being poverty. Systemic approaches are contributing to increased quality education, health care, sector jobs for young adults and gender support for girls / women - but not across the whole sector.

23.3%

worst forms/hazardous forms of child labor estimated by the NORC report



68%

of larger chocolate companies say they have evidence that the programs or schemes are reducing the prevalence of child labor situations – but verification is vague from many companies.

100%

of respondents have a policy for monitoring, reducing, or eliminating child labor in the company's supply chains but the average of farmer households in the supply chain covered by the programs is 55% and it is not clear if this is only with the direct supply chain.

18%

of company respondents say they had found and successfully remediated cases of forced labor and human trafficking in the past 12 months. In the 4th Edition of the Chocolate Scorecard only one company identified cases. This increase shows great leadership in appropriate actions and transparency by these companies. They are to be commended.

83%

of respondents reported having a policy to monitor, reduce or eliminate the exposure of children to pesticides and 70% say they are taking gender into account.

Source: Chocolate Scorecard: <https://www.chocolatescorecard.com/insights/>