

Dear Committee Secretary,

Thank you for seeking our views on the *Customs Amendment (Preventing Child Labour) Bill 2023*.

Fair Futures supports the principle that legislative efforts are required to ensure that goods made with child labour are not being imported into, or sold in Australia.

Recent estimates confirm that globally, child labour remains all too prevalent today. An estimated 160 million children were in child labour in 2020.¹ This includes seventy-nine million children who were in hazardous work that directly endangers their health, safety and moral development. The US Department of Labor publishes a list of goods and respective source countries which are believed to be produced by child or forced labour.² Many of the products on the list are likely to be imported into the Australian market, such as garments, cocoa and coffee from numerous source countries that all have high risk of child labour.

Alarming, global progress to eliminate child labour has stalled. When compared to the ILO's previous estimate in 2016, the percentage of children in child labour in 2020 remained unchanged over the four-year period while the absolute number of children in child labour increased by over 8 million.³ It follows that as a responsible member of the global community, Australia should look to increase our efforts to prevent child labour.

In countries where child labour is prevalent, prevention efforts need to include: ensuring that social safety nets are provided to support children and their families' experiencing poverty, free high quality education is universally available for all children until at least the minimum working age; and efforts are made to promote decent work that delivers a fair wage for young workers (above minimum age) and adults.⁴ But as the ILO notes, even in countries where child labour is not prevalent, governments still have a critical role to play, through addressing the risk of child labour risk in global supply chains.⁵

¹ International Labour Organisation and UNICEF, *Child Labour: Global Estimates 2020, Trends and the Road Forward* (New York, 2021), <https://www.ilo.org/publications/child-labour-global-estimates-2020-trends-and-road-forward>.

² Bureau of International Labor Affairs, "List of Goods Produced by Child Labor or Forced Labor," US Department of Labor, accessed April 30, 2024, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

³ International Labour Organisation and UNICEF, *Child Labour: Global Estimates 2020, Trends and the Road Forward* (New York, 2021), <https://www.ilo.org/publications/child-labour-global-estimates-2020-trends-and-road-forward>.

⁴ International Labour Organisation and UNICEF, *Child Labour: Global Estimates 2020, Trends and the Road Forward* (New York, 2021), <https://www.ilo.org/publications/child-labour-global-estimates-2020-trends-and-road-forward>.

⁵ International Labour Organisation and UNICEF, *Child Labour: Global Estimates 2020, Trends and the Road Forward* (New York, 2021), <https://www.ilo.org/publications/child-labour-global-estimates-2020-trends-and-road-forward>.

While supportive of the principle behind the Bill, we believe there is room to strengthen the Bill. We recommend the following:

Extend the prohibition to include products made with forced labour.

While child labour and forced labour are two distinct legal concepts, both share common features.

- Both child labour and forced labour have been identified by the international community as posing a serious threat to the larger objective of ensuring “decent work for all”. The importance of decent work is outlined in the United Nations Sustainable Development Goal 8, which aims to “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”.⁶
- Products made with both child labour and forced labour find their ways into global supply chains. Both reach Australian shores through our customs and imports procedures. It follows that import restrictions are an effective mechanism to tackle the import of goods made with either child labour or forced labour, even if their root causes may differ.

Accordingly, we recommend the Bill takes a comprehensive approach, linked to the decent work agenda, by seeking to prohibit the import of goods made with child labour, as well as those involving the worst forms of child labour, forced labour and slavery.

There are practical reasons to extend the law in this way. Child labour and forced labour may co-exist, and it may be impractical (and indeed impossible) for customs officials to look to draw a distinction. For example, cobalt is a source material for batteries which are used in computers, mobile phones and electric vehicles. An estimated 15-30% of global cobalt production is sourced from ‘artisanal’ mines in the Democratic Republic of the Congo (DRC).⁷ There is evidence of children as young as seven working in these mines, often for less than \$2 a day. Mining conditions are reported to be hazardous for both children and adults, with workers exposed to toxic cobalt dust without adequate personal protection equipment. 250,000 people work in these artisanal mines, including at least 35,000 children, many of whom could be considered as subject to forced or child labour. There would seem to be little value in requiring customs officials to differentiate between batteries made with cobalt involving child labour (which would be prohibited) vs batteries made with forced labour. Both should be stopped at the border.

⁶ “Goal 8: Decent Work and Economic Growth,” The Global Goals, accessed May 3, 2024, <https://globalgoals.org/goals/8-decent-work-and-economic-growth/>.

⁷ Clean Energy Council and Norton Rose Fulbright, “Addressing Modern Slavery in the Clean Energy Sector,” 2022, <https://www.cleanenergycouncil.org.au/resources/resources-hub/addressing-modern-slavery-in-the-clean-energy-sector?token=384>.

We acknowledge Sen. Roberts' argument that "adult slave labour" and child labour are "two different problems needing two different solutions".⁸ Also, Sen. Roberts suggests that the difficulty in legislating action around forced labour "has always failed on the definition of slave labour", whereas child labour has a "clear definition from the International Labour Organization". While agreeing the concepts can be easily confused, this does not mean they cannot be clearly defined in Australian law. Australia has ratified the ILO Forced Labour Convention (No. 29): which provides "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".⁹ This term forced labour is defined in Australia's Criminal Code Act (s270.6), in line with this definition.

Build mechanisms into the Bill that will support the identification of goods at risk of child and forced labour.

The task of identifying products made with child labour is not an easy one. This is particularly the case where a fairly generic product, such as a computer or mobile phone, may have been built using multiple inputs, sourced from multiple different suppliers. It follows that the success of efforts to prohibit imports made with child (or forced) labour will depend on the strength of efforts that are made to support customs officers with identification.

In the United States, for example, the US Tariff Act 1930 seeks to prohibit the import of goods made with forced labour. This Act has been used to withhold goods 39 times since 2015.¹⁰ In contrast, the US Uyghur Forced Labor Prevention Act (Public Law No. 117-78) (UFLPA), which relies on a rebuttable presumption that is triggered by the geographic origin of materials, has resulted in 5,346 shipments being detained between June 2022 and September 2023. Efforts by Australian Customs officers to identify products made with child labour are likely to face the difficulties that US officials faced under the Tariff Act. Accordingly, we recommend consideration be given to including mechanisms in the Bill that will make identification feasible in reality, including for example, ensuring the Bill refers to establishing lists of known high-risk products or regions.

The US experience confirms the importance of import bans being accompanied by sufficient resources, and the right machinery of government to enable enforcement by the agency tasked with that role. In recent Congressional hearings on the UFLPA, experts have noted the need for clear evidentiary standards to support decision making, efforts to source

⁸ Senator Malcolm Roberts, "Australia's Moral Obligation to End Child Labour," *Malcolm Roberts*, November 23, 2023, <https://www.malcolmrobertsqld.com.au/australias-moral-obligation-to-end-child-labour/>.

⁹ International Labour Organization, "Convention C029 - Forced Labour Convention, 1930 (No. 29)," accessed April 30, 2024, https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

¹⁰ Christopher Casey, Cathleen Cimino-Isaacs, and Michael Weber, "Section 307 and Imports Produced by Forced Labor" (Congressional Research Service, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF11360>.

relevant data, and tools to support identification and decision making, training and capacity building.¹¹

In the European context, lawmakers have recently passed a Regulation prohibiting the import of products made with forced labour.¹² This Regulation includes several features that are relevant to practical implementation:

- The creation of a Forced Labour Single Portal to bring disparate data sources together, including the newly established Database of Forced Labour Risk Areas or Products.
- Provision for cooperation with third (exporting) countries, including the potential for field visits.
- Establishing a Union Network Against Forced Labour Products, with responsibilities such as identifying common enforcement priorities, coordinating the collection and exchange of information, monitoring situations of systemic use of forced labour, and collecting data on remediation.

Consideration needs to be given to ensuring the import ban is supported by the right machinery, to enable law enforcement to do their job. This will need to include references to clear, objectively verifiable standards, but also the creation of new information tools and capacity to enable international cooperation with source countries.

Align definitions with international law.

It is imperative that definitions of key terms, such as ‘child labour’, reflect the internationally agreed understandings of these terms.

The ILO Minimum Age Convention states that, in most cases, the minimum age of work should be 15.¹³ There are provisions for some countries to initially set a minimum age of 14, and for light work that doesn’t interfere with school attendance to be allowed from 13 (or 12, for countries with an initial minimum age of 14). Although the Bill’s Explanatory Memorandum states that the definition draws on the ILO’s Minimum Age Convention, the draft legislation adds in a caveat where an individual under the age of 14 is not considered to be carrying out child labour if they are over the minimum age for ceasing compulsory schooling in their country.

Sen. Roberts has outlined the reasoning behind this caveat as being an issue of sovereignty: “It is not Australia’s place to specify a higher age for work than the country itself requires...It

¹¹ “Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains” (Washington: U.S. Government Publishing Office, April 18, 2023), <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CHRG-118jhr51889.pdf>.

¹² European Parliament, “P9_TA(2024)0309: Prohibiting Products Made with Forced Labour on the Union Market,” 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0309_EN.pdf.

¹³ International Labour Organization, “Minimum Age Convention, 1973 (No. 138),” 1973, https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138.

remains a sovereign right of each country to specify at what age that is”.¹⁴ However, we believe that this view undermines the premise of the ILO’s Minimum Age Convention. As earlier noted, Australia has ratified this convention and should therefore have legislation that reflects its principles.

Review the timeframes for penalties regarding non-compliance.

While acknowledging that the Bill seeks to strike a balance between giving importers time to fix problems and the seriousness of the underlying issue, the timeframes provided are overly generous. Under the Bill, where an importer is given a section 56 notice, they have three months to comply with this notice. However, there appear to be no consequences for an importer that does not comply with the notice for 24 months following that three month period. Does this mean an importer could continue importing the same goods during that period of time? Under the draft legislation, civil penalties do not apply until 24 months after the date specified in the notice, and banning of imports does not apply until 48 months after the specified date. We recommend reviewing these timeframes to better reflect what is reasonably necessary to respond to a notice, while also ensuring there are no extended delays between a notice being given and any further action being taken.

Include clear legislative provision to stop and withhold goods that are reasonably suspected of involving child or forced labour.

Finally, we recommend that where goods are identified as being reasonably suspected of involving child labour, clear legislative provision is made to ensure these goods can be stopped and withheld, pending next steps. For example, in the EU, authorities are directed to prohibit the product from being made available on the EU market; order the withdrawal of products already made available; and order the donation, recycling or destruction of the products, or parts of products, that are in violation. Exceptions are available where the product is part of a critical or strategic supply chain, in which case the product should be held and not destroyed. Similarly, in the US, customs authorities can issue WROs to block the import of goods.

We would be delighted to brief the Committee on our views on the Bill should this be useful.

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¹⁴ Canberra Senator Roberts, “Customs Amendment (Preventing Child Labour) Bill 2023,” text, Hansard, Australia, accessed April 30, 2024, https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/27148/&sid=0297.