



29 April 2024
Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary,

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

Walk Free is supportive of the principle that goods made with child labour should not be permitted into Australia's markets but strongly recommends that the Bill is expanded to include restrictions on goods made with forced labour. The International Labour Organisation (ILO) estimates that 160 million children were in child labour in 2020.¹ This accounts for nearly 1 in 10 of all children globally. Nearly half of those in child labour were in hazardous work that directly endangered their health, safety and moral development. Having ratified the Convention on the Rights of the Child, the ILO Minimum Age Convention and the Convention on the Worst Forms of Child Labour, Australia has committed to taking steps to ensure the progressive elimination of child labour. Legislation to prohibit imports made with child labour into Australian markets would be a step in the right direction toward meeting these commitments.

We have outlined below the key areas where we feel the Bill could be strengthened.

Expand coverage to include forced labour and slavery

Child labour can co-exist alongside other forms of harmful labour abuses, including the 'worst forms of child labour',² and also forced labour and slavery. Accordingly, we recommend the Bill adopt a comprehensive approach and seek to prohibit the import of goods made with child labour but also the worst forms of child labour, forced labour and slavery.

We know from the UN Global Estimates of Slavery that there were 27.6 million people in forced labour on any given day of 2021.³ Of these, 3.3 million of them were children. There are numerous examples of products where child labour and forced labour (of adults and children) may have been involved in their production. For example, cobalt is a key material in imports such as batteries. An estimated 15-30 per cent of global cobalt production is sourced from 'artisanal' mines in the Democratic Republic of the Congo (DRC).⁴ There is evidence of children as young as seven working



in these mines, often for less than US\$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.⁵

Covering a wider set of topics in this Bill will also help to align Australia's laws with the approach already being taken in the US and Europe. The Uyghur Forced Labor Prevention Act (UFLPA) (US) and the recently passed EU Regulation Prohibiting Products Made with Forced Labour (Import Ban) both seek to proactively prohibit the import of goods made with forced labour, including forced child labour.⁶

Build in practical measures to enable identification and enforcement

Experience in the US shows the difficulty of relying on individual customs officers to simply spot forced labour in a particular product. For example, the Tariff Act which relies on this approach has only been used to withhold goods 39 times since 2015.⁷ In contrast, the UFLPA, which relies on a rebuttable presumption that is triggered by the geographic origin of materials, has a much higher rate of enforcement, with 5,346 shipments detained under the act between June 2022 and September 2023.

Efforts to identify products made with child labour are likely to be difficult to identify without steps being taken to give clear guidance to customs officers on what they should be looking for. Accordingly, we recommend that the Bill includes mechanisms that will make identification feasible in reality, including for example:

- establishing lists of known high risk products or regions; and
- providing ways for civil society organisations to share information on labour abuses connected to particularly products, industries or regions.

The US experience also 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 the US case, Customs and Border Protection). Capacity is also being built through an agreement between the US, Mexico and Canada to cooperate over identifying goods made with forced labour. In recent Congressional hearings on the UFLPA, experts have noted the need for clear evidentiary standards to support decision making, efforts to source relevant data and tools to support identification and decision making, training and capacity building.⁸

The EU has also introduced a series of practical mechanisms that will be vital to enabling enforcement, including establishing a Union Network Against Forced Labour Products and a Forced Labour Single Portal.⁹ The Union Network will have 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. The Portal will bring disparate data sources together, including the newly established Database of Forced Labour Risk Areas or Products. Cooperation with third (exporting) countries will also occur, including the potential for field visits. The EU machinery will take a risk-based approach, which prioritises products based on the scale of suspected forced labour and the volume of products.

It is important that import bans do not exist in isolation but are part of a more holistic response. In Australia, this should include taking a pro-active approach to manage forced labour risks, by strengthening the Modern Slavery Act to include due diligence obligations. It could also include seeking to make use of Magnitsky-style sanctions, trade agreement chapters and business advisories.

Aligning definitions to international standards

We strongly recommend that the Bill refers directly to the international instruments on which it is depends for its constitutional basis, including the Convention on the Rights of the Child, the Minimum Age Convention and the Convention on the Worst Forms of Child Labour. It is imperative that any definitions used, particularly of 'child labour', reflect the internationally agreed understandings of these terms. The draft definition of child labour used in the Bill appears to depart from the internationally agreed definition. The ILO Minimum Age Convention states that, in most cases, the minimum age of work should be 15.¹⁰ There are provisions for countries to initially set a minimum age of 14, and for light work that does not interfere with school attendance to be allowed from 13. However, the definition used in the Bill 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. This definition appears to go against international understandings of child labour.

Timeframes

The draft legislation is extremely generous in terms of the timeframe provided to importers to respond to requests for information. Under the Bill, after receiving a notice from a custom officer, an importer has three months to comply with said notice. 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. As currently drafted, there are no consequences for an importer that does not comply with the notice for 24 months following that three-month period. It is unclear if this means that an importer could continue importing the same goods during that period of time. 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.

Build in capacity to stop and withhold goods of concern

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. Without this, there is a risk that the importer simply seeks an alternative market for the goods. 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 seize and potentially even destroy goods, where importers cannot show they should be released.

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

Sincerely,

Serena Grant
Head of Business Engagement

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 'The worst forms of child labour' is a phrase used in an ILO Convention, which includes all forms of child slavery or practices similar to slavery (e.g., debt bondage, forced recruitment for armed conflict), child prostitution or pornography, the use of a child for illicit activities (particularly for the production and trafficking of drugs), and any work which is likely to harm the health, safety or morals of children. See Article 3 of ILO Convention No. 182 - Worst Forms of Child Labour.



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- ³ International Labour Organization, Walk Free, and International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, 2022), <https://www.ilo.org/publications/major-publications/global-estimates-modern-slavery-forced-labour-and-forced-marriage>.
- ⁴ 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>.
- ⁵ Oliver Gordon, “The antidote for modern slavery in the renewables supply chain”, 2023, Energy Monitor, <https://www.energymonitor.ai/policy/just-transition/the-antidote-for-modern-slavery-in-the-renewables-supply-chain/?cf-view>
- ⁶ 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.
- ⁷ 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>.
- ⁸ Joint House and Senate Hearing, 118th Congress, Hearing before the Congressional-Executive Commission on China, April 18, 2023, Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains, <https://www.govinfo.gov/content/pkg/CHRG-118jhr51889/html/CHRG-118jhr51889.htm>
- ⁹ 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.
- ¹⁰ 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.