

2022-2023

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Customs Amendment (Preventing Child Labour) Bill 2023

No. , 2023

(Senator Roberts)

**A Bill for an Act to amend the *Customs Act 1901*,
and for related purposes**

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1 **A Bill for an Act to amend the *Customs Act 1901*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Customs Amendment (Preventing Child Labour)*
6 *Act 2023*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Amendments

Customs Act 1901

1 Subsection 4(1)

Insert:

child labour has the meaning given by section 53.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

goods involving child labour has the meaning given by section 54.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

work means any work whether for reward or otherwise.

2 Subsection 51(1)

After “section 50”, insert “or 51B”.

3 After section 51A

Insert:

51B Prohibition on the importation of goods in certain circumstances—goods covered by a notice that has not been complied with

The importation of goods into Australia is prohibited in a circumstance where:

- (a) the goods are imported into Australia by a person who was given a notice under section 56 or 57; and
- (b) the goods are goods of a kind covered by the notice; and
- (c) at the time (the *relevant time*) the goods are imported, the person has failed to comply with a requirement in the notice; and

- 1 (d) the relevant time is at least 48 months after the end of the
2 period specified in the notice for compliance with the
3 requirement.

4 Note: For goods imported into Australia by the person at a time that is less
5 than 48 months after the end of the period specified in the notice see
6 section 55 (penalties).

7 **4 After Division 1 of Part IV**

8 Insert:

9 **Division 2A—Importation of goods involving child labour**

10 **Subdivision A—Preliminary**

11 **53 Meaning of *child labour***

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

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

22 **54 Meaning of *goods involving child labour***

- 23 (1) Goods are *goods involving child labour* if:
24 (a) the goods are obtained or produced using child labour; or
25 (b) the goods are entirely or partially comprised of materials that
26 are obtained or produced using child labour.
- 27 (2) However, goods are not *goods involving child labour* only because
28 the goods are packaged in packaging material or a container and
29 the packaging material or container:
30 (a) is obtained or produced using child labour; or

1 (b) is entirely or partially comprised of materials that are
 2 obtained or produced using child labour.

3 **Subdivision B—Penalties**

4 **55 Penalties for importing goods covered by a notice that has not**
 5 **been complied with**

- 6 (1) A person contravenes this subsection if:
 7 (a) the person is given a notice under section 56 or 57; and
 8 (b) the person imports goods into Australia; and
 9 (c) the goods are goods of a kind covered by the notice; and
 10 (d) at the time (the *relevant time*) the goods are imported into
 11 Australia, the person has failed to comply with a requirement
 12 in the notice; and
 13 (e) the relevant time is less than 48 months after the end of the
 14 period specified in the notice for compliance with the
 15 requirement.

16 Note: For goods imported into Australia by the person at a time that is at
 17 least 48 months after the end of the period specified in the notice see
 18 section 51B (prohibited imports).

19 (2) A person who contravenes subsection (1) is liable to civil penalty.

20 *Penalty*

21 (3) The maximum penalty for the contravention is the amount worked
 22 out under the following table for the goods.

Amount for goods imported into Australia

Item	For goods of a kind covered by ...	that are imported into Australia at a time that is ...	the amount is ...
1	a notice given under section 56 or 57	less than 24 months after the end of the period specified in the notice for compliance with a requirement	(a) if the relevant court can determine the value of the goods—10% of the value of the goods; or (b) otherwise—200 penalty units.

Amount for goods imported into Australia

Item	For goods of a kind covered by ...	that are imported into Australia at a time that is ...	the amount is ...
2	a notice given under section 56 or 57	at least 24 months and less than 48 months after the end of the period specified in the notice for compliance with a requirement	(a) if the relevant court can determine the value of the goods—33% of the value of the goods; or (b) otherwise—500 penalty units.

1 (4) Despite section 5, a contravention of subsection (1) of this section
2 is not an offence against this Act.

3 (5) In this section:

4 *relevant court* means a court covered by subsection 57C(3).

5 **Subdivision C—Authorised officers may give notices to**
6 **importers**

7 **56 Authorised officers may require information or documents about**
8 **suspected goods involving child labour**

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

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

17 (3) The notice must:

- 18 (a) specify the kind of goods covered by the notice; and
19 (b) specify the manner in which the importer must give the
20 information or produce the documents; and

-
- 1 (c) specify the period within which the importer must comply
2 with the requirement to give the information or produce the
3 documents; and
4 (d) set out the effect of
5 (i) section 55 (penalties); and
6 (ii) section 51B (prohibited imports); and
7 (iii) section 137.1 of the *Criminal Code* (about giving false
8 or misleading information); and
9 (iv) section 137.2 of the *Criminal Code* (about producing
10 false or misleading documents).
- 11 (4) The period specified in the notice must be a period of 3 months
12 starting on the day the notice is given to the importer.

13 **57 Authorised officers may require specified action to reduce the**
14 **risk that goods are goods involving child labour**

- 15 (1) This section applies if an authorised officer reasonably believes
16 that goods imported, or intended to be imported, into Australia are
17 goods involving child labour, having regard to:
18 (a) information given or documents produced in response to a
19 notice given under section 56 to the importer for goods of the
20 same kind; and
21 (b) any other matter the officer considers relevant.
- 22 (2) The authorised officer may, by written notice given to the importer
23 of the goods, require the importer to take one or more specified
24 actions for the purpose of reducing the risk that goods of the same
25 kind imported into Australia by the importer are goods involving
26 child labour.
- 27 Note: An example of a requirement to take a specified action includes a
28 requirement to change suppliers for goods of the same kind or a
29 requirement that the goods of the same kind do not contain a particular
30 material.
- 31 (3) The notice must:
32 (a) specify the kind of goods covered by the notice; and
33 (b) specify the manner in which the importer must notify the
34 authorised officer that the specified action has been taken;
35 and

- 1 (c) specify the period in which the importer must comply with
2 the requirement to take the specified; and
3 (d) set out the effect of:
4 (i) section 55 (penalties); and
5 (ii) section 51B (prohibited imports).
- 6 (4) The period specified in the notice must be a period of 3 months
7 starting on the day the notice is given to the importer.

8 **Subdivision D—Miscellaneous**

9 **57A Self-incrimination**

- 10 (1) An individual is not excused from giving information or producing
11 a document under section 56 on the ground that giving the
12 information or producing the document might tend to incriminate
13 the individual in relation to an offence.

14 Note: A body corporate is not entitled to claim the privilege against
15 self-incrimination.

- 16 (2) However:
17 (a) the information given or document produced; and
18 (b) the giving of the information or the production of the
19 document; and
20 (c) any information, document or thing obtained as a direct or
21 indirect consequence of the giving of the information or the
22 production of the document;
23 are not admissible in evidence against the individual in criminal
24 proceedings other than proceedings for an offence against
25 section 137.1 or 137.2 of the *Criminal Code* in relation to giving
26 the information or producing the document.

- 27 (3) If, at general law, an individual would otherwise be able to claim
28 the privilege against self-exposure to a penalty (other than a
29 penalty for an offence) in relation to giving information or
30 producing a document under section 56, the individual is not
31 excused from giving the information or producing the document
32 under that provision on that ground.

33 Note: A body corporate is not entitled to claim the privilege against
34 self-exposure to a penalty.

1 **57B Authorised officers may inspect, copy and retain documents**

2 *Inspection and copying of documents*

- 3 (1) An authorised officer may inspect a document produced under
4 section 56 and make and retain copies of the whole or a part of the
5 document.

6 *Retention of documents*

- 7 (2) An authorised officer may take possession of a document produced
8 under section 56 and retain it for as long as is reasonably
9 necessary.

10 *Certified copy of documents*

- 11 (3) The person otherwise entitled to possession of a document
12 produced under section 56 is entitled to be supplied, as soon as
13 practicable, with a copy certified by an authorised officer to be a
14 true copy.
- 15 (4) The certified copy must be received in all courts and tribunals as
16 evidence as if it were the original.
- 17 (5) Until a certified copy is supplied, the authorised officer must
18 provide the person otherwise entitled to possession of the
19 document, or a person authorised by that person, reasonable access
20 to the document for the purposes of inspecting and making copies
21 of the whole or a part of the document.

22 **57C Civil penalty provisions**

23 *Enforceable civil penalty provisions*

- 24 (1) Each civil penalty provision of this Division is enforceable under
25 Part 4 of the Regulatory Powers Act.

26 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
27 be enforced by obtaining an order for a person to pay a pecuniary
28 penalty for the contravention of the provision.

1 *Authorised applicant*

- 2 (2) For the purposes of Part 4 of the Regulatory Powers Act, each of
3 the following persons is an authorised applicant in relation to the
4 civil penalty provisions of this Division:
5 (a) the Secretary of the Department;
6 (b) the Comptroller-General of Customs.

7 *Relevant court*

- 8 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
9 the following courts is a relevant court in relation to the civil
10 penalty provisions of this Division:
11 (a) the Federal Court of Australia;
12 (b) the Federal Circuit and Family Court of Australia
13 (Division 2).

14 *Maximum penalties*

- 15 (4) Subsection 82(5) of the Regulatory Powers Act does not apply in
16 relation to civil penalty provisions of this Division.

17 *Liability of Crown*

- 18 (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation
19 to the civil penalty provisions of this Division, does not make the
20 Crown liable to a pecuniary penalty.

21 **57D Publication of information about notices and non-compliance**

- 22 (1) The Secretary of the Department may, on a website maintained by
23 the Department, publish:
24 (a) if an authorised officer has given a notice under section 56 or
25 57 to an importer—details of the notice, including the
26 identity of the importer; or
27 (b) if the Secretary is reasonably satisfied that an importer has
28 contravened subsection 55(1)—details of the contravention,
29 including the identity of the importer; or
30 (c) if the Secretary is reasonably satisfied that an importer has
31 contravened paragraph 233(1)(b) in relation to goods
32 imported into Australia in the circumstance covered by

1 section 51B—details of the contravention, including the
2 identity of the importer.

3 (2) Before the Secretary of the Department decides to publish details
4 mentioned in subsection (1), the Secretary must:

5 (a) give the importer notice in writing of the proposed decision
6 and the reasons for the proposed decision; and

7 (b) invite the importer to make written submissions to the
8 Secretary about the proposed decision within the period of 28
9 days beginning on the day the notice of the proposed decision
10 is given; and

11 (c) have regard to any written submissions made by the importer
12 within that period.

13 **5 Paragraph 244(a)**

14 Omit “section 243B”, substitute “sections 55 and 243B”.

15 **6 After paragraph 264(2)(a)**

16 Insert:

17 (aa) penalties recovered in relation to a contravention of
18 subsection 55(1);

19 **7 Application of amendments**

20 (1) The amendment of section 51 of the *Customs Act 1901* made by this
21 Schedule, and section 51B of that Act as inserted by this Schedule,
22 apply in relation to notices given under section 56 or 57 of that Act on
23 or after the commencement of this item, whether the reasonable
24 suspicion or belief for the notice relates to goods imported, or intended
25 to be imported, into Australia before, on or after that commencement.

26 (2) Division 2A of Part IV of the *Customs Act 1901*, as inserted by this
27 Schedule, applies in relation to notices given under section 56 or 57 of
28 that Act on or after the commencement of this item, whether the
29 reasonable suspicion or belief for the notice relates to goods imported,
30 or intended to be imported, into Australia before, on or after that
31 commencement.