



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE
AND TRADE

Adopting a modern slavery act in Australia

WEDNESDAY, 2 AUGUST 2017

MELBOURNE

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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Wednesday, 2 August 2017

Members in attendance: Senators Fawcett, Gallacher, Reynolds, Singh and Mr Crewther, Ms Madeleine King, Mr Zimmerman.

Terms of Reference for the Inquiry:

To inquire into and report on:

The United Kingdom's *Modern Slavery Act 2015* and relevant findings from the Joint Standing Committee on Foreign Affairs, Defence and Trade's report, *Trading Lives: Modern Day Human Trafficking*. The Committee shall examine whether Australia should adopt a comparable Modern Slavery Act. The Committee shall have particular regard to:

- The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;
- The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;
- Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;
- The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery;
- Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;
- Whether a Modern Slavery Act should be introduced in Australia; and
- Any other related matters.

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SAM, Mrs Sreyna, Client Care Operations Manager, Cambodia, Hagar Australia

TOUCH, Ms Sophea, Client, Hagar Australia, through Mrs Sreyna Sam, Client Care Operations Manager, Hagar Australia, Cambodia

Subcommittee met at 09:04

CHAIR (Mr Crewther): I declare open this public hearing of the Foreign Affairs and Aid Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I welcome representatives from Hagar Australia. To begin with, we do have a request from Hagar Australia. Hagar Australia has requested permission to film parts of their evidence for the social media and their e-newsletter.

Resolved that the public hearing be broadcast on the parliament's website and that recording and filming be permitted during the hearing.

CHAIR: I do note that there are representatives from the ABC, the AAP and Ten who are filming and taking photographs at the hearing today. This is the fifth public hearing of the subcommittee's inquiry into establishing a modern slavery act in Australia. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera.

I remind witnesses that, in giving evidence to the subcommittee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by either house of parliament as a contempt. It is also a contempt to give false or misleading evidence to a committee. In accordance with the subcommittee's resolution, this hearing will be broadcast on the parliament's website and the proof and official transcripts of proceedings will be published on the parliament's website. Those present here today are advised that filming and recording are permitted during this hearing. I also remind members of the media present or listening on the web of the need to fairly and accurately report the proceedings of the subcommittee.

I now formally welcome representatives from Hagar Australia. Thank you for your time away from your regular work to give evidence here today. I would like to thank you for all the work that you are doing and thank you for your submission. I now invite you to make a brief opening statement or opening statements and then we will proceed to discussion and questions from members and senators of the subcommittee.

Ms Pride: Each of us will make an opening statement this morning. Perhaps I can just start by congratulating the government for instituting this important inquiry and also this committee for the very thoughtful and thorough work that you have been doing to date. I just want to start by introducing each of us. Our patron, Ms Griffiths, is going to start with the opening statements. Then I am going to hand over to Sophea, who has been a client of Hagar in Cambodia for the last 12 years. For the first time in her life, Sophea has not only boarded a plane but also travelled outside Cambodia to be here today and she is being incredibly courageous in sharing her story with us. Mrs Sam is our Client Care Operations Manager in Cambodia and she is going to talk about her work in Cambodia with Hagar and how it is that we support survivors of trafficking and slavery to rebuild their lives. I will try to pull some threads together and then, obviously, we will take some questions.

Ms Griffiths: Like you, I am here today for a simple and compelling reason: human beings should never be treated as commodities. You and I take that as immutable yet, as you know, the global slavery index estimates that there are more than 45 million people trapped in slavery at this time. It is astounding that so many people still believe that slavery is a horror of the past and that it has been nobly all but eradicated by an enlightened and globalised world. If only that were true! We know, in fact, that globalisation has modernised slavery along with the global economy and we are just catching up to what modern slavery looks like and how it operates. The truth is that there are more people in slavery today than at any other time in history. It is the second biggest illicit trade behind drugs on our planet. It is happening mostly in our region. It is happening via international criminal networks. It permeates labour from sex work to fishing to construction to domestic services.

We as a nation need to fully understand who these players are and how they operate and what mechanisms we have to thwart their operations. I feel very positive that we, as Australians and individual consumers, can make a considerable impact.

It will be a significant and complex task. We will fail if we approach it piecemeal or in a tokenistic way. We must talk to and listen to business. We will fail if we lack the political and social will. Australia is a leader, a significant power, in this region and I am so proud that Australia has introduced a strong international strategy to

combat human trafficking and slavery. I am also proud that all sides of parliament are united in their commitment. For me personally, this has been exemplified most recently by our world-leading ban on the travel rights of our convicted paedophiles, something that Hagar has been passionate about since we started working out of Australia. We look to what can we do here rather than point the finger at foreign operators. Also the upcoming Bali process business forum is testimony to our ability to influence positively in our region.

There is momentum building. Australians are waking up to slavery and the trafficking that works in our region. I am afraid to say that it is closer to home than many of us would ever believe. It is a shocking truth that slavery-like practices are being employed by suspect operators here in Australia. I know that you have been listening to those stories and I implore the Australian media to report how we are responding.

As you also know, the last few years have seen the growth of important transnational organisations, such as the freedom fund, whose research and advocacy shine a light on what modern slavery looks like. Andrew Forrest's full audit of the Fortescue supply chain is a profound example of how organisational values and rigour can affect change in business, and many other leading Australian companies are becoming slavery aware.

But not every business can see the edge that transparency gives them in an ethically competitive market. We do believe that, in order to make such practices the norm, government, business, civil society and media must join forces to enact and support a modern slavery act. It is the right time for our government to further champion the fundamental values of all Australians and the inarguable dignity of human liberty by engaging formally with the business community and the consumer to really bring about resounding change.

We implore a commitment by media to report encouraging, positive stories about business transparency. This way companies both public and private can act without fear of negative publicity fallout from self-reported discoveries in their supply chains. The media is critical to building our increased advocacy in our region.

As awareness grows, consumers will drive the change by ignoring companies that are not prepared to demonstrate effort in cleaning up their supply chains. The Australian government could lead better here by making sure that no slavery is involved in the goods and services it procures. We believe that most Australians would think this was already standard practice and that our tax dollars may not only be going offshore but to unpaid and exploitative labour. Surely that is a matter of public outrage and is unwanted and unhelpful.

Finally, perhaps I can mention one issue about which Hagar has developed strong opinions and has joined other international voices, which is orphanage tourism. Australian organisations such as schools, universities, community, and sport and faith-based groups need to become better educated about the orphanage economy and the negative outcomes for children that our engagement is causing. Vulnerable children should not be visited by Australians who lack protection training and skills to engage appropriately with children who have experienced trauma. Parents living in poverty should not be incentivised to break up their families by sending their children to orphanages.

We in developed countries have come to understand that orphanages are not the place for children to develop appropriate human attachments. Children raised in orphanages have difficulty learning what parenting should look like and in becoming parents themselves. This is an area where we could see quick behavioural and cultural change with the help of firm statements from governments and appropriate media coverage. I know that DFAT is currently looking at some really great solutions to offer well-meaning Australian consumers better access to the correct way to engage on a personal level in our region. Senator Reynolds, of course, has been a remarkable voice on this issue.

Each of you has entered politics for different, and worthy, reasons—and each of you has different issues that you are passionate about. I know, however, that you all share a belief in fairness, in decency, in justice, in law and in humanity, and this is an inquiry that you can unite on. Abraham Lincoln nailed it long ago: 'If slavery is not wrong, then nothing is wrong.' Non-government organisations such as Hagar are doing what we can case by case. We see the survivors of these networks and bring them back into an economic and an emotionally fulfilling life. But the Australian government can leverage its position in the region using bilateral and regional diplomacy. We believe that it should sit with the UK and the US in leading the global take-down of slavery. So please seize this moment to use your power. I urge you to make your recommendations bold. Australians will salute you. Innocent victims in our neighbourhood will have the chance of life, of dignity and of value because of you. Now, to inspire you about freedom and what it can look like, I will hand over to Sophea.

Ms Touch: I was born in a violent family—violence from my mother—and lived there from when I was born until the age of four. I was sent, by my father, in a car with a lady to live in a place 300 kilometres from my home. I was so small at about three or four years old and did not know whether I was sold or my father just wanted to save me from my mother's violence. Living far away from my family, I never had experience of what freedom

was. No-one cared for me; I was forced to work selling cakes around the village and did not get a chance to go to school for an education. I was beaten by that lady and I was not given food to eat if I could not sell all the cakes. I wanted to be like other children, in that they could go to school, have friends and be loved.

CHAIR: Take your time. Have a rest, if you need to, as well.

Ms Touch: And have enough food to eat and not have discrimination from the neighbours. Every day I lived with fear because I had to sell all the cakes. I was beaten by that lady every day and not given food to eat if I could not sell all the cakes. I was forced to sell all the cakes even if I was ill. I was not taken to the hospital or given medicine. What I received was violence all the time.

When I was seven years old, I tried to escape, but I was found by that lady and there was even more violence. The neighbours did not allow their children to play with me because they thought I had no parents, so maybe I was not a good girl, and maybe not good for their children to play with. Because of the feeling of living with fear, I tried to run away many times. I tried to run away from that lady's home in order to find a family that could provide what I needed, like caring and getting me to school. But those families could not provide those needs for me. The four families that I lived with were the same; they beat me and forced me to work more than I should as a child.

The last family I lived with gave me enough food and got me to school, but they were even more violent to me. I felt so hopeless because I thought that there were not any other, better ways for me, so I decided to commit suicide on two occasions, by jumping from a window and by hanging myself. But I was still alive. When I was 11 years old, I decided to steal one of the bicycles of the family in order to escape, to live in a religious home. I heard about that religious home from a lady that came to visit the family I was living with. On my way, it was dark and I was stopped by a family, as it was about to rain. That family allowed me to stay in their home for a while, they gave me love and promised that they would take me as their adopted child and that they would take me to school. They said that, in order to do that, they would need to take me to their home town. But there was interference by a community chief, so I was not sent anywhere else.

The community chief found me a safe place. He tried to find an organisation, because he thought that only an organisation could keep me safe and could give me food, education and love, as I had been dreaming of. So he contacted Hagar and sent me there. The first day in Hagar I felt scared and strange because I had never known this place before. What I was most scared of was that this place might not be different from the previous places and that maybe this place was not able to provide what I needed. But I was totally wrong, because Hagar loved me and cared for me; I got friends and I could go to school.

No matter what the circumstances, Hagar never gave up on me, made me whole and I could continue my dream. I have loving care from foster parents; I have a mum and I have a dad. They love and care for me, which I never received before. I have other brothers and sisters living around me. I have a counsellor who works with me and helps me with my problems and with going through my deeper trauma from day to day. I have a case manager to work with me on my care plan, and follow up on my study and financial support, so that I can live and learn as the other children do, and so that I was not discriminated against like before.

Today I have finished my bachelor degree in social work and now I am a social worker, working as the education outreach officer. I have had this job for one month now. What I have got today is from Hagar walking alongside me and not giving up on me. I have freedom in my life; I am responsible for myself and I can help other people who have the same life and background as me.

From a small child who used to live with abuse and violence, my dream now is to help other victims who have had the same difficult life I have had so that they are not subject to being abandoned by their parents, to torture or to any other kind of human rights abuse. I want them to get the help they need to be loved, to be cared for and to enjoy freedom, and especially to have their basic needs met. Thank you.

CHAIR: Thank you, Ms Touch, for your evidence here today and for coming all the way from Cambodia to tell your story; you have been very brave in telling it. Your personal insight will help create some good legislative outcomes in Australia. Thank you to Hagar Australia for your work in support of people like Ms Touch and others around the world. Thank you to Ms Griffiths for your support, not only as an actress, but also as patron of Hagar Australia in bringing awareness to this issue. Our subcommittee sent a delegation to the United Kingdom recently. One of the issues they raised was the lack of awareness of what modern slavery is and what we need to do to tackle it. So, your bringing awareness to that issue, as well as the media here today, is extremely important to understanding this issue, and being able to tackle it. The interpreter may wish to pass on what I have just said to Ms Touch.

Ms Pride: Yes. The interpreter will translate that back to Sophea.

CHAIR: Ms Sam.

Mrs Sam: My name is Sreyna Sam. I am Client Care Operations Manager with Hagar, in Cambodia. Thank you so much for providing this opportunity for Hagar, and for Sophea and me from Cambodia to be here; it is our privilege. I have been with Hagar for almost 12 years. There must be a reason for my staying with Hagar this long—it is about my life; a broken life on its own journey of healing while helping others to heal. My connection to the work I am doing for these vulnerable people helps them to heal and at the same time I am healing from my personal traumas in this world. It has made me a better mother of my three kids and has enabled me to help people with similar backgrounds to mine to move on with their lives and help others. So it is multiple traumas healing.

I was born in a refugee camp during the Cambodia wartime after the Pol Pot regime and experienced a tough life of discrimination and abuse. Being from this past, I have worked alongside women, children and men suffering the impacts of trauma resulting from human rights abuses, trafficking and slavery. To help them to recover and heal, to be strong, to have a dream and hope to be able to live their lives independently is the purpose of my life.

In Hagar, we do community-based recovery, providing a safe family home placement with the family of origin, kinship or foster care—where our clients can stay safely. Living in a community can help them with self-determination and to recover quickly. They have to learn to adapt to their community when they are ready to get back to their families. Hagar case management provides community awareness training to the community and to families regarding human rights abuses and trafficking, and parenting skills and understanding the impact of the trauma to help them be responsible for protecting their children in their community. This helps to reduce community stigma. The clients feel included in their own community, connected and supported by their families and the people in the village. Counsellors work with clients who have a deep history of trauma. Education is provided to the children and youth, and job training and employment is provided to men, women and youth. Hagar also provides capacity building to internal and external stakeholders in case management for trauma information, care and counselling. Partnership is very important to run the work we do. Having laws to prevent slavery is a great thing, but there are so many people who have already been in slavery who need very good aftercare so that they can recover from their trauma and live a productive life. Again, thank you so much for allowing us to be here this afternoon and thank you for all the work you have been doing for humanity, freedom and protection here in your country as well as spreading it to the other side of the world. I take this opportunity to thank DFAT, which has been with us in our journey for these four years and four months in Hagar, Cambodia, with these women and children and men, to help them be free from the bondage of trauma, abuse and to achieve their dreams.

CHAIR: Thank you very much and thank you for coming all the way from Cambodia to give evidence; we appreciate it. Ms Pride.

Ms Pride: You would have seen in our submission the very clear point coming through of the importance of listening to the voices of survivors of slavery. Sophea's story may not seem immediately relevant to the inquiry you are doing into a modern slavery act; she did not work in a field or in a factory producing goods that were ultimately imported into Australia. But I think what it does show very clearly is that, firstly, slavery causes severe trauma to those who experience it. The vast majority of survivors of slavery want to live quiet, often anonymous, lives after everything they have been through. Sophea is an exception to the rule. She is an extraordinary young woman who has consistently expressed a desire to undertake advocacy and to stand up for other young women like her. Sharing a deeply personal experience as she has done this morning can trigger re-traumatisation but, because of Sophea's desire to do advocacy, we were hoping that it would be an empowering experience for her to come and speak to you. So, thank you for that opportunity.

Sophea's story demonstrates the complexity of the issue of slavery. Sophea was in a situation of domestic servitude at a very, very young age that she could not leave; she talked about the hopelessness she felt in that situation. But she did leave, and moved from family to family, ultimately. That demonstrates how disadvantage can compound and then compound in these situations. Domestic servitude is one of the most hidden sides of modern slavery and yet it is so prevalent. It is one of the reasons why it is so difficult to measure with any certainty the prevalence of slavery in the world today. I hope that Sophea's courage in sharing her story has helped to illustrate just how long it can take to recover from an experience like that.

As Sreyna outlined, Hagar's model is very comprehensive. We focus on protection, ensuring that our clients have somewhere safe to live. We prefer community-based care. We have a foster care system so that we can get children into families, modelling good parenting, which Rachel mentioned. We have moved right away from institutional care in Cambodia and work with a number of other organisations to highlight the damage that being

in institutions can do to children. We provide our clients with legal support. Often there are court cases where they are giving evidence to testify against those who have abused them. We provide them with medical care, trauma counselling, and the chance to go to school, as Sophea talked about, and to go to university. Then we have a network of business partners where we can place our clients in a job. Now that Sophea has been working for the past month, we will continue to follow her for the next two years to ensure that she can live fully independently of Hagar.

So you can see that it is an intensive model; it is a big investment. Our saying is that we do whatever it takes for as long as it takes to transform a life. If you put that in the context of there being more than 45 million people in slavery today, the extent and depth of trauma coming out of slavery is overwhelming, and illustrates the importance of investing both in prevention and in recovery afterwards.

I am not going to speak to all the points in our submission but simply add our voice in favour of a modern slavery act. It is the right next step for Australia to take in showing leadership in tackling modern slavery today. It is a good thing for companies to be reporting at board level on the steps they have taken to both identify and address slavery in their supply chains. There should be a central public repository for those reports. We think there should be more prescription and consistency in the way companies report. There is a need for the government to provide real guidance and good examples of where companies have addressed this in their supply chains. We urge the government to lead by example in looking at its own procurement practices. Finally—again this links well to Sophea's story—all this needs to sit within a broader strategy on trafficking and slavery that incorporates the Australian aid program and the kind of diplomatic conversations we are having bilaterally with other countries in regional fora and at the global level. It is time for Australia to act on this issue; it is an issue that all Australians can agree on and, we hope, all parliamentarians can too.

CHAIR: Thank you for your evidence here today. What insight has your work in assisting and supporting victims of modern slavery given you into what Australia should focus on, whether it is in modern slavery legislation or beyond that in terms of what we should do to further stem human trafficking and modern slavery conditions?

Ms Pride: There is a tendency in this space to focus on sex trafficking and slavery because it is so sensational, but we know that labour slavery is incredibly widespread and is the majority of slavery in the world. A modern slavery act that encourages culture change in Australian businesses is a good step in bringing about culture change. It is something concrete this country can do. When you look at issues beyond slavery that link into Australian supply chains, and at what we are doing through the Australian aid program, in Cambodia one of the causes of slavery there is the deep gender inequality. The rights of children are not readily understood, either by those in authority or in the community; there is a need for some real work on that front. Then there is just the deep poverty there. We need to have bilateral conversations with Cambodia but also look comprehensively at what we do through the aid program in that country and, regionally, look at issues about trafficking in and out of countries. For example, in the work we are doing in Cambodia and Vietnam, we are increasingly seeing brides being trafficked into China to meet the huge demand that is there. So, it is looking at what regional strategies we can adopt to address some of those issues.

Senator REYNOLDS: Thank you very much to all of you for your testimony here today; as you know, it is very significant. I just want to say to Sophea: thank you very much. Your bravery and your courage in coming here and sharing your very painful story with us, I know, takes a lot of courage. It will make a difference and I think it will make a difference to many other people who have been in your circumstance as well. I just want to thank you very much because it is very significant.

I would like to focus on the issue that you called the orphanage economy. I think, as this committee is looking at it, raising awareness is very important, as is educating the public—and obviously people like you and the media have a big role in that. We know that there are at least eight million children globally, and probably many more, in unregistered institutions. So as we raise that, and if we are successful, we will cut off the money supply to these for-profit facilities. But the big issue then is how do we support the children who are in these facilities and reunite them? One of the things—this is from when I visited Cambodia and we have heard it also from Sophea—is actually getting them into their own families, kinship or other families who will love, support and nurture them. Can we use your model of success, because there will be many more children for whom we need to find homes and intensive support? I wonder whether you could share with the committee some of your lessons learnt and tell us how we can perhaps use your model as something that we can then seek broader support for.

Ms Pride: I think the reality is that it will take some time. Obviously our preference is for children to live with their families wherever that is possible. The second preference is kinship care and then, after that, foster care. When we are reintegrating our clients, whether it is into their own families or into one of those other types of

care, we work directly with that family but also with the community in which that family lives to educate them around the issue of trafficking and slavery, to educate them in positive parenting models and to educate them in the rights of children. Obviously that takes time to do. At a community level, it takes buy-in from local community leaders as well and the local institutions. Just recruiting foster families can take time as well.

Whilst there is actually a great interest in becoming foster families, like organisations here in Australia, we have very strict processes for filtering those, training them and ensuring that they are absolutely water safe in terms of providing protection to very vulnerable children. It does take time to recruit them, to train them and to test that they are then capable. Then there is the challenge of emergency care as well. There is still a lot of emergency shelter accommodation occurring, but we have increasingly been recruiting foster families to provide that emergency care as well. They are there on call and willing to operate in that way rather than providing long-term care. I do think we can get there, but I think the challenging reality is that it will take a great deal of investment and time.

Senator REYNOLDS: It will not just happen.

Ms Pride: Yes.

Ms Griffiths: I would like to add to that I think it is about strong statements from government particularly that will be heard by schools and community organisations, well-meaning families and individuals who really are very empathetic to the plight of children in our region—strong statements by government and clear mechanisms for us to find a better way to engage. I think you are talking about the law of unintended consequences. I have a lot of respect for people's empathy. I think it needs to be held and nurtured. I think you are right to point out that a disastrous outcome, as the message of orphanage tourism gets out there, is for people to just close their wallets and feel like they were scammed and to stop contributing. I think that needs to happen at the same time as some fairly quick processes of 'well, we still want to engage but tell us how to do it more effectively'.

I know that you are proposing a wonderful idea of a DFAT portal you can go on and just vet what organisations are delivering services in what way. I think schools have a huge role to play in becoming more sophisticated in how they are having their students engage in the community sector. At my school, we have a crazy hair day where parents spend \$20 and kids donate \$2; it goes I do not know where. The feeling is there, the selfies are there, but actually the outcomes are not measured. We need to engage a very beautiful generation who I think are very empathetic in how to donate their time and raise money out of their community and deliver it effectively. We need to counter the selfie moment. If running into the orphanage and being greeted by 100 children, making you feel good, is the selfie moment, it is going to take time for our educators to explain that, while it may feel good, it may not actually be good. The other mechanism of maybe slightly hands-off giving through organisations that have proven that they can deliver community care better does not necessarily feel as good, but you should find a way for it to feel better, knowing that children's needs are being more holistically met—that is, for parents to become educated and to teach our children. I think schools are an excellent mechanism to really review our giving and measure the outcomes.

Senator REYNOLDS: That is a very good point: having a look at the motivations. The word 'selfie' says it all really. It is all about me feeling good about myself rather than 'am I doing good or making it worse for somebody else?' Thank you. Perhaps this is an issue for Sophea. What would you like to say to us in terms of what you think we can do that would make the situation better for other children either in domestic servitude or in institutions?

Ms Touch: To have a law that protects—whatever you do it is to protect the children from all kinds of abuse—and also making sure that what you import into your country is not involved with any trafficking or exploitation.

Senator REYNOLDS: That is very good advice; thank you. My last question—I will just ask whether Ms Pride can take this on notice for the committee—is whether you have further thoughts on this issue of our starting to cut off the money. We are going to hear from others later today who have had the experience where the orphanage operators just go and leave the children; they abandon them. As we progress through this, how can we put some models together and perhaps some advice for other agencies on how we might deal with this to make sure that we do not just transfer people from homes and orphanages into short-term care which becomes long-term care? Thank you very much.

CHAIR: I will pass to the deputy chair but before I do so, just in the interests of time, I ask that each member and senator asks just one question to begin with and then, if we have time—once everyone has had a chance to ask a question—we can ask some further questions.

Senator GALLACHER: Ms Griffiths, you made the comment that most Australian taxpayers probably expect their government to be procuring in a manner consistent with avoiding slavery and human trafficking. Do

you see the way forward being similar to that of the US, where they have passed the federal Business Supply Chain Transparency on Trafficking and Slavery Bill, or do you see a change to the Commonwealth procurement rules, or both?

Ms Griffiths: I think the latter is probably the place to start. I will admit that my knowledge is not in the area of nitty-gritty policy and I will hand back to Johanna on that. I am encouraging of conversations between all stakeholders and I believe that all Australians want these issues tabled and talked about. I think, with most human rights conversations, there has to be a conversation in that we work out what is doable and what is aspirational and we find somewhere between the two.

Ms Pride: I think there are two elements to this. One is around public expectations and accountability, which Ms Griffiths talked about. There is an onus on the government to be the model citizen and to be demonstrating best practice in this area. The other part of it goes to the culture change that we are looking for in corporate Australia. I think that the government has the opportunity to provide the incentive of being able to contract to government by including considerations of slavery in its procurement guidelines.

Senator GALLACHER: The \$300 billion spend by the Australian government dwarfs any corporate expenditure. So if transparency in that spend applies to major businesses, it might shift the market faster.

Ms Pride: Absolutely.

Ms Griffiths: One point that we have not made, of course, just going to the consumer—and I am sure you are aware of it—is that free labour obviously gives certain businesses huge economic leverage against those that are paying their workers. I think there is a role for government to level that playing field.

CHAIR: The chair of the full committee, Senator David Fawcett.

Senator FAWCETT: Ms Pride, in your submission you make a number of recommendations about the National Roundtable on Human Trafficking and Slavery—that the private sector should be more involved and that there should be more small groups. You also make some recommendations around key civil society representatives contributing to the Bali Process. Have you raised these with government and, if so, what has the response been?

Ms Pride: No. We really started thinking about this in the context of reflecting on the mechanisms that the government has established to date, in pulling the submission together—I will be honest with you. We do have a roundtable coming up. I guess our reflection was that we seem to be developing mechanisms—for example, the roundtable—where government is engaging with civil society, and then the Bali Process Government and Business Forum, where governments are engaging with businesses in the region, but there is no forum in which all three are really coming together at the moment. That is really what we are encouraging. It would be really interesting to include some leading business figures in the roundtable. There is a recommendation in there in terms of the way in which the roundtable works. It is a very formal process when we come together. It is an excellent forum in which to advance these issues, but I do think some of the best work of the roundtable has happened outside of that formal process in the working groups.

Senator FAWCETT: I will come back, if the chair allows me more time.

CHAIR: Senator Singh.

Senator SINGH: Perhaps I can also start with Sophea. Sophea, can I say orkun; thank you for being so brave. Going on to be an advocate for children like you have is incredibly uplifting, but I know that it must be very traumatising sometimes. So thank you; orkun. To Rachel Griffiths, I just want to say that there is political will here and it is bipartisan, so we will make it happen. Your testimonies today are really quite different from the evidence that we have heard so far. So far, when we have looked at a modern slavery act, obviously a lot of our focus has been on prevention. Today you have really opened up the issue of recovery from trauma as new evidence, so thank you for that. I will say, though, that in your submission you talk about one of the ways of dealing with combating modern slavery and addressing its root causes is through this focus on Australia's aid program and I think you said to incorporate Australia's aid program maybe in this legislation; I am not sure. That is one area we do not have bipartisanship on.

Australia's aid program is at record low levels. I want to ask you what you see that contribution of Australia's aid program in combating modern slavery looking like, what kinds of measures could be addressed and, therefore, what kind of financial increase should be made to address some of those positive outcomes that could come from a contribution of aid and development funds into countries like Cambodia. We know that the majority of slavery and trafficking is happening in the Asia-Pacific. It is a worthwhile addition, but I just want to know what that really looks like.

Ms Pride: We do share the concern about the succession of cuts to the Australian aid program and certainly any additional funds for new trafficking and slavery work should be in addition to existing programs and not instead of those programs. There are a couple of good programs that are currently in operation: the TRIANGLE program and the Australia-Asia anti-trafficking program—I am sure that I do not have the title of that correct. They do look very much at a regional level. I think what needs to really happen, in concert with that, is: what is then happening in each of the individual countries and which countries will we prioritise action on this perhaps to model some best practice and to really test some deeper engagement in what can be achieved through that?

As Sreyna mentioned, Hagar has been supported by DFAT in Cambodia but through the embassy there and not through Canberra here. I guess we would encourage the government to continue to invest—and it is doing so—in both prevention and recovery. I think, when you hear someone like Sophea and you can see the value of that restored and rebuilt life in advocating and really being able to bring about change, it is very important to include recovery in the program as well as prevention.

Ms Griffiths: I do not think anybody thinks that, if you ask Australia and the UK to pull back on foreign aid which may be responding to certain electoral pressures, slavery figures will get better. Somewhere there is a correlation of the leadership of countries that operate from firm human rights values, and I include Australia very much in that list. So it is hard to tell other countries what to do from afar with a kind of tick, tick if we are not also in there contributing for good. I think it gives us more specific knowledge and a bigger right to have an opinion.

Ms Pride: I think just one further thought to add is that what we are looking for in the aid program is not just trafficking and slavery-specific programs—and I mentioned this before—but really looking at some of the drivers of the situation that Sophea found herself in as a child really speaks to the way in which children are viewed in that country, to gender inequality and just to that deep poverty. I know that Cambodia, for example, is looking at what it does with the convention on the rights of the child. Looking at those kinds of initiatives and more broadly at children's and women's rights is really important.

Mr ZIMMERMAN: Thank you as well for your evidence today. I want to focus briefly on the issue of Australian educational institutions visiting orphanages. I wonder whether you have any indication how many schools or other institutions are actually participating in programs that take their students there and, remembering that most schools are systemic schools, whether there has been any coordinated effort to reach out to school authorities to deter them and, if so, is there push back simply because there is not enough information or is there push back because they disagree fundamentally that what they are doing could be harmful.

Ms Pride: I cannot quantify that in terms of giving you a figure but anecdotally it is still very common for schools to be visiting orphanages. We do frequently get asked by schools about visiting our work and often they are visiting an orphanage on the same trip. So that is always a good opportunity for us to initiate that conversation with them and to talk about not only the challenges around visiting orphanages and ensuring the right child protection training and not fuelling the orphanage economy, as Ms Griffiths said, but also some other forms of volunteerism as well—having year 10 students try to build a toilet block, for example. That is never even done in tech studies.

Having said that, I am increasingly finding the relevant staff at schools receptive to this issue. When they become aware of it, they are eager to ensure that they are creating responsible social justice experiences for their students. They are looking for evidence of what is wrong with orphanage tourism. I have certainly had requests for that from schools so that they can start that conversation with the parents of the students at their school and explain why they are changing their model.

Ms Griffiths talked about the importance of understanding people's empathy, and I think that genuine desire of parents to build a sense of social justice in their kids and the value of being able to go to a developing country and to start that journey and to have your eyes opened cannot be underestimated. I think there is a real challenge in how you start that awareness, that desire and that experience for students in a way that actually is responsible. As a general rule, we talk about going on a learning trip, on a study tour, immersing yourself in a culture and understanding what local organisations are doing.

One of the other challenges that I see in this space is that a whole lot of young people are getting really inspired and wanting to start their own charity and not necessarily always taking the time to see the good work that is already happening with other charities. We have more than 50,000 charities in this country and I suspect that there are already many doing the good work that up-and-comers might want to feel good about. So it is really asking those tough questions: why do I feel this need to start my own charity or actually could I invest my resources and my skills in helping an existing organisation that is doing really good work?

Mr ZIMMERMAN: Do you have opportunities for students to participate in your programs?

Ms Pride: We do take school visits. Generally they are a learning tour, meeting some of our key staff. We do on occasion take visitors to our school but we do it after school hours so that you can meet the principal and see the facilities. There are sometimes some children walking around. When we do take visitors, there is a whole child protection training that goes with that as well. Then we try to identify other opportunities for schools to learn about Hagar's work and to participate. One example is that we have an event coming up in Cambodia at the end of the year called run for freedom where they can go and run around the Angkor Wat temples and do some fundraising for Hagar. But then we have organised for some of our staff to be there and really talk them through what it is that Hagar does and then to support a couple of former clients that are now living independently to share about their experiences. So there is that human interaction; there is that moment to be inspired about what can happen and what you are fundraising for, but it is done in a really responsible and learning way.

Ms Griffiths: I think there is a research gap and a consultative gap in this area of how much money schools are raising, where that money is being spent and judging how effective it is. There is such goodwill and energy from very committed parents, as Jo has said, to not raise entitled children and to raise children who are committed to making other people's lives better. I think we are at this moment where there is a lot of cash splashing around, a lot of energy. I think, between DFAT, independent consultants, older models of philanthropy that have not updated intellectually and a gap in teacher training models and education models, there are a lot of cracks and I do not know whose job it really is—whether it is just per school and per institution. It does feel like somebody or some institution could set up and put a beacon on their lighthouse and say, 'Hey, come here for what you need or we can direct you out.' Whether that is government, I do not know. Whether it is the department of education, I do not know. Whether it is the individual churches running the schools, I do not know. It is a really interesting area of investigation.

Senator REYNOLDS: Minister Simon Birmingham has actually committed to contacting—through states, through COAG—schools and getting awareness out there. You might like to write to Simon Birmingham and just pass on those comments and maybe some suggestions.

Ms Griffiths: We want to replace it with something and, as you have pointed out, we do not want that spigot just turned off and it to come back and everybody goes to a place of fear of engaging. It is how to capture the energy and redirect it.

Senator REYNOLDS: That is a very good point.

Ms MADELEINE KING: Thank you all for coming in today and for your submission, especially our friends from Cambodia who have made great efforts to come here to make a very valuable and personal contribution to this committee's work. I just want to add quickly to what Senator Singh has said and to emphasise that everybody's testimony here today and also the submission add to the need for this legislation to take account of victims and to really concentrate on what the parliament needs to do for victims of modern slavery. Thank you for that. Other organisations have said similar things, and it is important for us to acknowledge and to take account of that.

My question goes to Australian-based charities. If Australian-based charities or groups seeking funds from charities in Australia or charities setting up in Australia are adding to the issue of institutions such as orphanages or are profiting from vulnerable children in other countries such as Cambodia or around South East Asia, do you think those charities should be required to report in a manner similar to what we are asking businesses to report on in their supply chains as proposed in this modern slavery legislation? What do you think of that suggestion?

Ms Pride: I think that the best place to regulate this for Australian charities is through the Australian Council for International Development and its code of conduct, which is considered world's best practice. It is very thorough. There is now a working group through ACFID working on this issue of children in institutional care. I feel that the large charities and the smaller charities that are doing good work in this space are the ones that are complying with the code, and probably the ones that are outside that, I think, are more likely to be funding orphanages. Often they are very small organisations. I think that they would, to be frank, lack the resources to give proper rigour to a really thorough reporting process. But I feel like this is where public education and culture change really need to kick in, where Australians are being made aware of this issue and are encouraged to be giving to organisations that are acting responsibly in this space.

Ms Griffiths: And charities have boards. It just takes one person on the board of a school, one supporter to go, 'Wait, wait, wait; who are we working with; have we vetted them; are they registered; are their children registered?' So I think knowledge and education is a stronger place to start right now than—

Ms MADELEINE KING: Some of the charities are excellent—there is no doubt about it—but, as you say, the smaller groups have governance issues or volunteer contributions to boards. How do you get that

accountability that Ms Griffiths was talking about earlier of all the money that is slushing around? It is probably not going to be in the modern slavery act but a greater push of knowledge, as you are saying, through the ACNC or other means. I was just wondering what you would think of that.

Ms Griffiths: I think working with children is something—that is an act, that is a law, that is something that this coach or that volunteer parent does—that is now common knowledge through the community. Ten years ago it was not. It is like: 'What do I have to do; where do I have to do it; do I really?' I have been working with kids for a long time. We now know that that is our base and I think the same thing, through education, can be done with registered charities and approved charities, and I think DFAT have a really excellent role to play.

Senator FAWCETT: You might like to take this on notice, Ms Pride. Recommendation 7 is about applying penalties to people who do not do appropriate due diligence or take appropriate action. We have talked about the burden that that might apply, particularly to a small business dealing in supply chains, where it can really be quite obtuse in terms of getting to the end of a supply chain. You are perhaps, amongst all the witnesses we have heard from, unique in that you have obviously established good relationships with, in this case, the Cambodian government.

I would be interested in your opinion—again, you might like to take it on notice; if you want to answer in camera, that is fine—about the potential for working with governments in nations where we do see a lot of supply chain abuse around the efficacy of their efforts to identify slavery. For people who may be subject to a modern slavery act here, to what extent can they place trust in some of the institutions and legislative frameworks in the nations concerned? Is that an area where our foreign aid program perhaps can be working on governance issues to try and put in place those frameworks? If you could take that on notice, that would be great.

Ms Pride: Yes, I will.

Senator SINGH: My question is a little bit like Ms King's, in relation to how this committee inquiry will be inclusive of victims like you, Sophea. Obviously, our focus is very much on a modern slavery act and the business supply chain, businesses in Australia—and large businesses, at that, in the main. In recommendation 6 of your submission you state:

Annual slavery and human trafficking statements should be submitted through a central online portal and made publicly available in a central online repository.

Should those statements include organisations or institutions other than Australian businesses? If we are going to include the likes of institutions such as those in Cambodia and the charities that provide funding to them, the recommendations we have had in relation to a central repository are not going to capture the victims like Sophea. Should we be broadening this in any way, shape or form? Obviously, today has been really important; it has shone a light on a part of this awful trade in human dignity and misery that has not been shone there before, so it is really important. I am trying to find out how we as legislators can actually do something constructive through this inquiry to ensure that we are going beyond just perhaps the business supply chain issue that has been the predominant focus so far.

Ms Pride: There are three things in relation to that. Firstly, there should be consistency in the application of the act, at whatever threshold is set across organisations, whether they are for profit or not for profit, as a general principle. The UN guiding principles on business and human rights talk about the responsibility to protect, respect and remedy human rights violations.

Going to your point about where the victims fit into all of this, it would be really interesting to incorporate some considerations around what companies are doing to remedy acts of slavery and actually think about the restoration of survivors' lives when they do identify that—what their responsibility is and what they might want to do proactively in that space. I think that is a really interesting area of inquiry. Finally, I do think that issue of small businesses or small charities is a tricky one. I agree with Ms Griffiths that the best place to start tackling that is with public education and awareness and culture change in terms of directing where people might give their charity dollar.

CHAIR: A final question to be taken on notice from Senator Reynolds.

Senator REYNOLDS: I have an addendum to my question on notice. Perhaps you could also look at any advice you have domestically. One of the successes of the UK model is that they have very good victim support to make sure that they do not re-victimise the victims, as well as using the Salvation Army to provide that support. In terms of your advice about what we can do overseas, could we actually import here any of the lessons learnt working with Sophea and many others in order to have a look at what support we provide to victims here domestically?

Ms Pride: Really briefly on that, there is some excellent work happening with a number of the agencies that I know you have heard from already, here in Australia. We do think it is important to be able to provide compensation to those victims and we hope that will be a reality very soon.

Senator REYNOLDS: Practically, in terms of frameworks, if you have anything else, we would love to hear of it in terms of our final report.

Ms Pride: Yes.

Ms Griffiths: One thing I would like to add that we did not get to, and it is also on education, is that I think our universities have a real role in educating their business students about what modern slavery looks like. Many kids going into business schools do not understand that slavery is not a white van and people being chained up in factories; it operates in labour outsourcing. Many enslaved workers who thought they were working for money doing trade A end up in a different country in trade B, unpaid and with legacy payments that effectively mean that they work for nothing. I do not think that those messages are being taught enough in universities. I do not know what the government can do there, but I certainly think universities have an excellent role to play.

CHAIR: Thank you very much for your evidence today. Thank you also for coming all the way from Cambodia to give evidence, as well as for your submissions and the work of Hagar Australia. I note that we are a bit over time for the next witnesses. We did have a scheduled break, but I will make that a shorter break. That will ensure there is a full hour available for the next witnesses. Thank you once again.

Proceedings suspended from 10:21 to 10:34

CHAN, Ms Sinet, Ambassador, Cambodian Children's Trust

NAVE, Ms Andrea, CEO, Forget Me Not Australia

WINKLER, Ms Tara, Co-Founder and Managing Director, Cambodian Children's Trust

CHAIR: I welcome representatives from the Cambodian Children's Trust and Forget Me Not Australia. Thank you for your submissions. Is there any additional detail about your appearance here that you would like to give to the subcommittee?

Ms Nave: Forget Me Not Australia operates child protective services in Nepal, India and Uganda. I am here today in that capacity to represent our organisation.

Ms Winkler: The Cambodian Children's Trust is a child protection organisation based in Battambang, Cambodia.

CHAIR: I invite you to give an opening statement or statements, which members and senators of the subcommittee will follow with discussion and questions.

Ms Nave: Good morning. Thank you for your time this morning and for the opportunity to speak with you today at this very important inquiry. My association with Forget Me Not since 2005 has allowed me to bear witness to the harms inflicted on children who have been unnecessarily institutionalised as a result of the desire that travelling volunteers and tourists hold 'to do good' or to have a life-changing experience. Many of the children in our programs over the years have told me their personal stories of trauma and sadness that most often beggar belief. Their stories, and their desire to be at home with their families, now drive the work of Forget Me Not—to end the era of orphanages and orphanage tourism in countries such as Nepal and Uganda.

I recall visiting our orphanage in Nepal in 2011. I was pulled aside by one of the small girls, who at the time was nine years old. Umina took me by the hand and led me to the rooftop of the orphanage and with pleading eyes said to me in a whisper, 'Aunty, please, I want to go home. I want to be with my mother, my father and sister—please, aunty.' We were told that Umina was an orphan, but she had family who had given money to someone on the promise of an education for their child in a great big city; that city was Kathmandu. The only reason Umina was in an orphanage was because we had opened one and had funds flowing into that country. Knowing we were part of her family's pain was very difficult to bear.

Forget Me Not ran a best practice, award-winning model orphanage. We thought that doing the right thing for orphans like Umina was the right thing to do. We established our charity as a result of a young travelling Australian volunteer wanting to help children. He unwittingly became part of the orphanage business model where children are trafficked into a system and somehow become modern-day slaves, used as a commodity by operators for financial gain through sponsorships, donations and the unending revolving door of visiting tourists looking to give back while they are on their travels, treating children as a tourist attraction. When Forget Me Not learned that the children in our care were not orphans, but had parents and homes we were shocked; anybody would be. We had supported these children for eight years, funding their education, their living needs, their health and so forth. We thought we were acting in their best interests. But what was in their best interests is what we did when we learned their truth. We began the mammoth task of tracing families, finding homes and reuniting each one of those children with their family. Since that time, we have faced the fact that our orphanage was part of the problem. We have learned the ironic truth that establishing orphanages, supporting orphanages and visiting orphanages is creating the so-called orphan crisis in developing countries—a bit like: if you build it, they will come—and they did.

The problem with placing children into orphanages is that it causes irreversible harm to their well-being and development. The younger a child is when they enter the orphanage, the worse the outcome for them long term. It is sickening to learn the statistics about children who exit from orphanage care. No matter how well that orphanage is run, children need families in order to develop. With this parliamentary inquiry into establishing a modern slavery act, I believe that organisations like Forget Me Not can deliver their mandate of de-institutionalising children and helping to put an end to the modern slavery chain. When the Australian public is informed about the harms of funding orphanages and orphanage tourism as a cause of modern slavery, I am certain that a change in behaviour will result and therefore the supply and demand for paper orphans will cease. There is a better way to support vulnerable children, and that is through family-based care. When we know better, we can do better. Forget Me Not, as an organisation, is proof of that. This inquiry is now part of that learning and will help inform and guide Australians on how they can truly stand up for children's rights and help to stop perpetuating this form of modern slavery through their actions. We believe that education is the key and we believe that the Australian public are always willing and ready to learn. Thank you.

CHAIR: Ms Winkler.

Ms Winkler: Thank you. It is an honour to be here today because I believe that this inquiry could be an important moment in history. It has the potential to play a significant role in ending a particularly insidious form of child abuse and exploitation that is affecting the lives of millions of vulnerable children around the world. I have been blessed to know some of these children personally—children who have suffered terribly in Cambodian orphanages. My story is very similar to the origin and story of Forget Me Not. Like many young Australians, after I left school I went travelling through South East Asia. When I reached Cambodia, I felt uncomfortable being on holiday surrounded by so much poverty and I wanted to do something to give back. So I visited some orphanages and donated some clothes, books and money to help the children whom I met. One of the orphanages I visited was particularly poor. I had never experienced poverty like that before in my life, and I felt compelled to do something more to help. So I fund-raised in Australia and returned to Cambodia the following year to volunteer at the orphanage for a few months. But over the next year I came to discover that this orphanage I had been supporting was terribly corrupt. The director had been embezzling every cent donated to the orphanage and, in my absence, the children were suffering such gross neglect that they were forced to catch mice to feed themselves. I also found out later that the director had been physically and sexually abusing the children.

I could not bring myself to turn my back on children whom I had come to know and care about and return to my life in Australia, so I worked with a local team and the local authorities to set up a new orphanage and rescue the children to give them a safe, new home. It did not take me long to learn to speak the Khmer language fluently. When I could communicate properly with the kids, I discovered that most of them were not orphans at all; they had families. The few who were orphaned had other living relatives. They told me about how much they missed and worried about their families. So why were these children living in an orphanage when they were not orphans? The short answer is that they were being used as commodities, deliberately kept in despicable conditions and denied their most basic human rights simply to attract donations from tourists. At first I thought it was an isolated case—just one bad orphanage operating as a business. But I have since learned that it is representative of a silent global epidemic. The number of orphanages across the developing world has boomed in recent years. This increase in orphanages is not being caused by an increase in poverty or increasing numbers of children being orphaned. In Cambodia, both the number of orphans and the poverty rate are in steady decline. This global orphanage crisis is being fuelled by the donations flooding into orphanages from foreign tourists, volunteers and owners.

Millions of children have been taken from their families and imprisoned in orphanages where they are being exploited for the purposes of fundraising. That is trafficking and, therefore, it is also a form of modern day slavery. The exploitation of children in orphanages does not just relate to the corrupt orphanages, like the one that I rescued the kids from, because children are harmed in all orphanages, in all forms of institutional care. Over 60 years of international research has shown us that children who grow up in institutions, even the very best institutions, are at serious risk of developing mental illnesses, attachment disorders and growth and speech delays, and many will struggle to reintegrate back into society later in life and form healthy relationships when they are adults. The indiscriminate affection that tourists encounter when they visit an orphanage, when a child runs up to a perfect stranger and jumps into their lap, is a sign of an attachment disorder. It is a survival mechanism for institutionalised children who are vying for the love and attention of adults who are constantly coming in and out of their lives. One study has shown that young adults who are raised in institutions are 10 times more likely to fall into sex work than their peers, 40 times more likely to have a criminal record and 500 times more likely to commit suicide.

I had to learn all of these lessons the hard way after I had already set up an orphanage in Cambodia. I had to eat a big piece of humble pie to admit that I had made a mistake and had inadvertently become a part of the problem. I had been an orphanage tourist, a 'voluntourist', an orphanage donor and an orphanage founder, and then I facilitated orphanage tourism, because it generated funds for the orphanage, before I knew better. What I came to learn is that, no matter how good my orphanage was, it would still ultimately be causing harm. But today my organisation, the Cambodian Children's Trust, is no longer an orphanage. In 2012, we changed the model in favour of family based care. CCT and other organisations like Forget Me Not have proven that there is a solution to this global orphanage crisis and it starts with recognising that a fundamental need of all children is to be raised in safe and nurturing families, not institutions.

I strongly believe that a modern slavery act should be introduced in Australia and that this act needs to include the regulation of Australian engagement with overseas orphanages. First and foremost, this act will serve to protect children, but it will also protect Australians from unintentionally acting in ways that harm the very children they are trying to help. By redirecting the flow of funds from orphanages towards family based care

initiatives, we will help to close down an industry that sees children trafficked, exploited and abused and, instead, ensure that they are able to grow up in families and communities where they belong. Thank you for giving me the opportunity to share my experiences here today and to shine a light on an issue that is still largely unknown to most Australians. I would be happy to answer any questions that you have.

CHAIR: Ms Chan, do you have any further statements to make at this point?

Ms Chan: Yes; thank you. I was nine years old when I first went to live at the orphanage. My family was very poor and both of my parents died from HIV. After that, my sister and brothers and I were sent to live at the orphanage. At first, I thought it would be a good opportunity for all of us because we had been through a very difficult time, but I was wrong. The orphanage got its funding from the tourists and, when the tourists came, we needed to perform for them to make them happy, like singing a song, playing games with them and learning English and Japanese. Sometimes they would buy us some clothes or food, but we were not allowed to keep them. The director of the orphanage would take them back to the market and sell everything. He became a rich man and had a very big house. At the time, for me, performing felt like working. We were also forced to work at the director's rice fields and at his fish farm. We worked so hard to generate income for the orphanage. It was only later that I realised I was being exploited and used like a slave.

We never had enough food to eat. Sometimes the man would give us some leftover food, but often we would catch mice to eat. We also did not have clean water to drink. When we were sick, there was no medication. My sister had HIV and got no treatment. The older children in the orphanage were not orphans but had families. Only me and my siblings were orphans, but we had two older brothers who were adults and living nearby. I remember that one time a boy tried to run away and go back to his parents. He was beaten and made to work double time on the rice field and got even less to eat. Another terrible thing that happened to me was that I was raped by the director of the orphanage several times. I am sure that I am not the only one he did this to; he must have done this to the other girls too. He told me that he would kill me if I ever told anyone, so I never did, not until I left the orphanage with Tara in 2007.

The volunteers at the orphanage never noticed anything, but they noticed us children looking poor, so they would donate. I used to like it when the volunteers came to the orphanage; they would play with us and sometimes buy us some food. But it was even more terrible when they left; every time it would feel like we were being abandoned. I met many volunteers when I was at the orphanage. I know that they are good people and I know that they want to help, but what they do not know is that their actions are hurting children. The more tourists come, the more orphanages are set up and the more children will be separated from their families.

Even Cambodians do not know the whole truth. Many poor parents believe that sending their children to the orphanage means a good future awaits them. They believe that their children will be taken care of and will have a good education. They have no idea what really happens inside. Luckily for me, that is all in the past. I am now a grown woman, I live independently and I have a good job as a script writer for a Cambodian TV series. Thanks to the support of Tara Winkler and the Cambodian Children's Trust, who have helped me and my whole family, I have been able to heal and recover from some of the trauma that I have been through. It is not easy for me to tell this story, but I do not want you to feel sorry for me; that is not why I am here. I am here to tell my story because it is important for people to know about the abuse and exploitation in orphanages. I would like to urge the Australian people to stop supporting, donating or volunteering at the orphanages. Your kindness and generosity can help to solve the problem if you have organisations where children are supported to stay with their families. Thank you.

CHAIR: Thank you very much for all your evidence, as well as the work of both the Cambodian Children's Trust and Forget Me Not Australia. In particular, thank you, Ms Chan, for coming all the way from Cambodia to give evidence and for your bravery in sharing your story. It is really helpful for our committee to hear your evidence in terms of determining what we do with the modern slavery legislation. I will start with initial questions and then I will pass to other members and senators for further questions. My initial question is to you, Ms Winkler. The children that were under your care—have you since been able to return those children to their families or is it still the situation that the families cannot be found? What is the current situation with the children that used to be under your care?

Ms Winkler: Initially the first step that we took at CCT was to find Cambodian foster families for the children, which enabled us to close the orphanage. From there, once the children were in Cambodian foster families, we began the process of family tracing. We now only have 14 children that are in foster care. Our model works on the basis that foster care is an absolute last resort after we have exhausted all other solutions to keep children with their biological families or in kinship care with extended relatives or even with a foster family who the child currently has a relationship with. All the children that we originally rescued out of that orphanage were

able to be reconnected with their biological families or with their extended families and the few that were not able to be reconnected with their family were placed in a Cambodian foster family.

CHAIR: Is there some risk with some families that they re-send the children to another orphanage, if they do not understand—

Ms Winkler: The way that our model works as well is by providing support to those families. Our team of social workers works with the family. We work within a social work framework called 'signs of safety', which is a strengths based collaborative framework, which helps families to think through their own problems and come up with their own solutions which we help to facilitate. If the problem is poverty, where parents are struggling to provide adequate nutrition, health care and education for their children, we work with those families to come up with solutions to those problems and, as a very last resort, we run community centres where children can access those services—nutrition, meals, health care, public school education and that kind of thing—while they are still able to stay living with their families.

CHAIR: Ms Chan, I have a quick question for you as well. During the time you were living in the orphanage, did you come across Australians being the volunteers? Did you have contact with Australians during that time, or was it people primarily from other countries?

Ms Chan: There were a lot of different volunteer foreigners, also from Australia, and Japanese. I think a lot of nationalities came to the orphanage.

CHAIR: I will pass to the chair of the full committee, Senator Fawcett, and then to the other members of the committee.

Senator FAWCETT: Much of the evidence around this bill has focused on what the UK act has done and it looks particularly at businesses and their reporting requirements for supply chains. In the charitable sector, it strikes me that the regulatory authority is really the charities commission. One of the levers that the Australian government has is DGR status in terms of funding. Is there a place for reporting by groups who want DGR status to indicate that they have looked into, if you like, the supply chain of their work and have applied appropriate due diligence to check the groups they are supporting? I am aware of one orphanage in Thailand in particular where the children there all have HIV and are orphans and it is legitimate, but clearly, as you have highlighted, there are many that are not legitimate. Is that a model or an approach that you think would have value in terms of making charitable groups do due diligence?

Ms Winkler: Can I also just reiterate that I do not believe there is any such thing as a legitimate orphanage. Children are harmed in all forms of institutional care. Whether they are actual orphans or have HIV is not a reason to institutionalise a child. We do not have orphanages in this country, for a very good reason. We would not put a child who had a chronic illness or who did not have family into an institution in this country. That should not be happening anywhere in the world. Our model proves that there is never a circumstance in which we would ever place a child at CCT into an institution. For us, the last-case resort, after we have exhausted all other solutions, is foster care. That is just in answer to that part of the question.

But I do think absolutely that it is necessary to look at all the flow of funding that is coming into these orphanages from Australia—whether that is Australian aid or aid from NGOs, religious institutions or educational institutions—and to look at ways in which we can stem the flow of those funds and having institutions report on the types of organisations that they are giving to, with the key factor being: are these children living in residential care? That word 'orphanage' is just a euphemistic label; the children in them are not orphans. At an AIDS orphanage, those children probably have parents too, who could be providing the care, with some support, to their own children. So I think it is getting very clear around the definitions of what these organisations would need to report on. It is not: are they donating to an orphanage but are they donating to an organisation that is institutionalising children?

Ms Nave: Regarding the DGR and due diligence, most often when an Australian charity decides to establish, they partner in country with an existing organisation that may be running an orphanage or a residential care facility or what have you. It is their job before they even reach out to government bodies to decide whom they are going to partner with. Essentially, unless they are an existing INGO in that country, they are just a funding body. The way Forget Me Not Australia started was as a charity; we did not have DGR status. We generated enough funds and we just partnered with an organisation in country. So we just funded. We did not have a voice there. We did get to ask questions but we did not get to answer those questions back to the Australian government. We just ticked the boxes. In that regard there is not really a mechanism that would play out in that scenario that you recommend or suggest.

I think, though, there could be added a tick box to the due diligence, DGR-style application regarding residential care: is the charity that you hope to support or fund or work with in country operating residential care facilities? And, if so, why? It is not a model we operate in Australia, as Tara mentioned, so why should we be funding and supporting it and perpetuating this ancient, outdated, nightmarish, romantic model to well-meaning, generous Australians? It is really not the way.

Mr ZIMMERMAN: Thank you for your evidence today and particularly Ms Chan for providing such a personal account of your experience. I want to focus on the issue of the awareness that Australians have about the issue of orphanages. I remember, Ms Winkler, that when a mutual friend of ours, travel writer Lara Dunston, posted an interview with you a couple of years ago it went viral around the world. But are you actually noticing that there is a great awareness and, in country, is there any guidance at all being given to tourists visiting Cambodia that they need to think twice about orphanage visits?

Ms Winkler: In my experience over the years we have been campaigning and trying to raise awareness about this issue, I guess when you are in this line of work you are aware of every single news article or blog or TV piece that it is done about it. It feels like there is lots of information out there. But if I do a talk to a room full of people, the chances are that nobody has ever heard such an idea of an orphanage; they have this really romanticised idea of it and they think it is a good thing. I think there are these echo chambers or something that this information is circulating through and not really getting out to the wider public in Australia.

The one really hopeful thing that I think about this issue is that when you connect the dots for people it really is an issue of raising awareness. Most people who are engaging in orphanage tourism or donating to orphanages are doing so with the very best of intentions wanting to help. So the thought that they might be causing harm is horrifying. Once you join the dots for people and they are aware, that behaviour change is immediate. I have spoken to a room full of people who were literally supporting orphanages and by the time I finished my talk they all promised that they would change the way they gave and supported in the future. I think the issue of raising awareness is key to solving this problem.

Mr ZIMMERMAN: I have a follow-up question. Are Australian charities running orphanages in Cambodia?

Ms Winkler: Yes.

Mr ZIMMERMAN: Are there many? Are they major charities? What is the structure of charities running orphanages?

Ms Winkler: There are Australian groups running residential care. Again, this is where the complexity of this problem comes in. Especially now with the move towards deinstitutionalisation, a lot of organisations change the way they depict their work so that they do not call themselves an orphanage anymore, but they still have children in residential care who have families who should not and do not need to be there. There are lots of groups, big and small, that are still running institutions that house children who have families.

Mr ZIMMERMAN: Did you want to comment on that?

Ms Nave: I can reiterate that with Tara. The same situation happens in Nepal. There are Australian charities that fund orphanages, hostels. There are a variety of names that fall under that orphanage title. There are subtitles there but they all have the same feature—children living away from their family unnecessarily when they could be home if the family was supported to do so. That is what the research tells us, and that is what drives and informs our work—to get children home where they need to be. Nepal is very, very similar in that context to Cambodia.

Ms MADELEINE KING: Thanks for coming in and telling us what must be very touching stories about having hoped to have been helping and then finding out it is the opposite of helping. It is very difficult to recognise and it is good that you do. I take your point, Ms Nave, that the model of residential institutions is something that stopped in Australia some time ago. Why should we, therefore, encourage or participate in supporting such institutions overseas? That is a point well made, I think.

When I asked Hagar about requiring charities to report, their response, if I took it correctly, was that education as to the significant exploitation of children in these areas is probably a better way to go rather than any kinds of changes to legislation. But if I am right, Ms Winkler, I think you just suggested that you would support requiring some Australian charities to report, because that is the only people we can really have any kind of influence over, in some way about the groups they fund overseas and that they be required to do some due diligence into the institutions or whatever it is they are supporting that might have some children involved or any kind of, I suppose, links to potential slavery. Is that right? Is that what you are suggesting?

Ms Winkler: Absolutely. I think that would be a great step forward in helping us to combat some of these issues. It is so insidious, this problem, and the belief as well that a lot of people think that they are supporting the

good orphanage. That is what I thought, too. That is what everyone thinks they are supporting. No, they trust the person that is running this one. It is so difficult for us to stem the flow of funds. In regard to any of those sorts of official channels in which those funds are being delivered from Australian NGOs or Australian aid from Australian educational institutions or religious institutions, if we can have some sort of formal process where there is that due diligence and vetting done of those partner organisations to make sure that we are not inadvertently funding institutionalisation of children, the long-term institutionalisation of children, I think that would be a great step forward in helping us to solve this problem.

Ms MADELEINE KING: So a sort of legislative tool coupled with education is probably not a bad way but is a good way to start?

Ms Winkler: Absolutely, yes.

Ms MADELEINE KING: With this kind of change?

Ms Winkler: Yes.

Ms Nave: That sub-tick box, if you like, probably should look at ways those organisations on the ground are structured. Are they structured formally? Do they have a government standing? Do they report and hold case information about the children they are providing for? Do they hold audits? Are they transparent within themselves as a strong child protection agency for children in those countries? A lot of them are not. In fact, a real lot of them are not. I do not have exact statistics but for many organisations that Australian charities do fund it is really very ad hoc. They run to a standard kind of budget plus any surplus, and those funds are not delivered according to a time line or line-by-line itemised budget and in the best interests of the child at all. It really is a flow of funds coming in without a lot of regulation.

Senator REYNOLDS: Thank you very much for your advocacy in this area and also for your testimony. Sinet, I want to particularly thank you for your testimony today. It is never easy sharing what you shared today, and I know it was very painful, but it was so important for us to hear that. I would very much like what you have said today and your voice here to be heard by many more Australians who are thinking about volunteering in Cambodia or elsewhere. So thank you for that.

I would like to ask you some questions, if it is not too painful. With Australians, Japanese and others coming through the facility you were in, you said that you do not think that they knew what was happening to you. Is that right?

Ms Chan: Yes.

Senator REYNOLDS: From your perspective, what were some of the things that if they had their eyes open they should they have seen that they did not see? What did they misunderstand that they were seeing? They saw happy children coming up to them but what did they miss? What did they not see?

Ms Chan: It is hard for them not to see it in a different way because when I was at the orphanage every time we got funding from every donor the director would take them back to the market and sell everything. He dressed us up to look poor so that the visitor or volunteer sees us in a pity way and they would donate more. They see the kid asking for help but not really know deep inside this kid have family or not. They all think that every child in the orphanage is an orphan. I think they never thought that some of the kids have family. So it is hard for them to see it in a different way.

Senator REYNOLDS: When people came to where you lived, did the operator allow people to come and talk to you, play with you, interact with you?

Ms Chan: Yes, he did, but they would play with us but not really ask the question to know what are you feeling or the kids cannot tell them, like me, their problem, I will never tell anyone because he threatened me. I think the same with the other kids. They suffer a lot. They just want to survive. They just want to live. They just want to have fill for their stomach. They did not really try to show themselves telling them what really happened.

Senator REYNOLDS: Did you receive any education at all in the facility?

Ms Chan: We did, but not very much. Most of the time we worked on the rice field and at the fish farm and grew vegetables or something like that.

Senator REYNOLDS: Was that food used to feed you or was that food mostly to sell?

Ms Chan: Sending to the market.

Senator REYNOLDS: Sending to markets to sell?

Ms Chan: Yes.

Senator REYNOLDS: In terms of practical advice, what I am hearing is that we need a comprehensive approach to this issue. I think that there are probably solutions that we can adopt in this legislation that the UK has not yet done. But it is not just an issue of legislation; it is an issue of raising awareness and educating Australians, hearing Sinet's story and knowing the implications of what they are doing and how to volunteer in the ways that you are suggesting with communities and with families. That is the education part.

But as we talked with Hagar, the issue then, as you know, is: if people leave the institutions because they are not making any money and leave the children, how do we make sure that we do not make things worse for the children in those institutions currently? It is stopping people going in but then what do we do? What are some of your thoughts about, if there are eight million-plus children globally, how we then make a sensible plan together with other agencies working in this area to make sure those children do not suffer even more?

Ms Winkler: I think there are a couple of things. I often hear from donors in Australia that they are worried that their charity dollar does not really have any impact—that it is just like a drop in the ocean and you do not really see any change. The issue of this orphanage crisis is evidence that there is absolutely a big impact. We have created an industry that is trafficking children. So these orphanages, and the boom of these orphanages across the developing world, has been created by the impact that we are having.

If those funds are then redirected and channelled into initiatives that are family-based care and community-based care solutions, those solutions will be created in those countries. In the same way that lots of orphanages have popped up in response to the demand, innovative family-based care solutions will also be created if those funds are redirected. It is about making sure that Australian funds are funding family-based care solutions—making sure that kinship care, foster care and family preservation work is being funded so that organisations like CCT, Forget Me Not and other partners can do more of that work, and we can get these children (a) out of these orphanages and (b) prevent vulnerable families from ever being separated in the first place.

Senator REYNOLDS: In terms of your experiences in finding families, that is obviously an important part of the process. How do you go about reuniting children that may have been three or four years old and have no recollection of their families or of who they are? What are some of the lessons that you have learnt in terms of how you go about that process?

Ms Nave: Our work specifically in Nepal serves to work with the government of Nepal to assess orphanages, both legal and illegal, to rescue those children, for want of a better term, and bring them to our transitional care facility in Kathmandu. The process starts from day one. Our social workers and carers provide for those children, slowly building up their health and wellbeing, and working with those children to become their own best advocates. So that process of family tracing starts with the semblance of documents that we get when we bring the children to us.

Also, because a country like Nepal is so remote and hilly, with cities, valleys, mountain areas and so forth, the children themselves are where we start. Even for young children, we ask them questions like, 'When you looked out your front door, what did you see? Trucks, buses, cows? Valleys, mountains, snow? What were the traditional costumes of your mother or your aunts? Was it red and gold? Was it certain types of caps, gowns, adornments and so forth?' The children help to piece together their own background because, as we have mentioned, the younger they are when they enter institutionalised care, the harder it is for those children to remember. We introduce them back to those kinds of things, to help trigger those memories and to help build a case.

We then send, as primitive as it may seem, our reintegration officers out into the field, sometimes on red herring hunts, but often with success, where we find families intact and grieving over the loss of the child that they sent away at three and four years old in the hope of an education. The child is brought to a city. They have false birth and death certificates prepared for them. They are entered into the orphanage business model and they become child A—a small, happy face on an internet website of an Australian charity. For example, 'Raj is six. He likes soccer. He needs your sponsorship dollar because he dreams of being a soccer star.'

Senator REYNOLDS: In relation to that, I have one final question. That then raises the linkages between these children's false papers and international adoptions, because obviously there is a link there. How do people know in international adoptions if they are one of these children who are in an institution with false papers? Have you come across that sort of crossover, in terms of the work you do, into that industry?

Ms Nave: Very briefly, I will say that the next witness who will speak, Kate van Doore, has some insight into that and she will be able to answer that question more formally for you. There is no actual way of knowing, unless a child has been relinquished formally by a birth parent at the time of birth or signed documents that they can read and understand for the relinquishment of a child for that process. That is all I can really state on that area. It is not

my particular area of expertise. Forget Me Not, when we did operate as an orphanage, were sometimes approached by Australians saying, 'I'd like to adopt. Can you help me?'

Ms Winkler: I will add a couple of things to both of those points. In the Cambodian alternative care policies, there is a spectrum of care, and international adoption is in there as an option, but as a last-resort option after all in-country options are exhausted. The stance is that in a country where there is no strong, functioning child protection system, international adoptions are very risky, because there is not any way of being sure that those children have not been trafficked into the orphanage.

Senator REYNOLDS: With false paperwork?

Ms Winkler: That is right. In Cambodia, with the issue of family tracing, our experience is that—this is one of the tragedies in Cambodia—family is so central to the culture and community is still really strong, and before this whole orphanage boom the way that Cambodia dealt with the problem of orphaned and vulnerable children was in kinship care. Really, that concept of the village raising the child still exists. So our social workers normally find it quite easy. The children mostly know where their home is, and if they do not know, they usually have a sibling. If they are very young, an older sibling is also with them. Neighbours and people know. The community is so strong that they know where these kids are. We have not ever had a huge problem with family tracing and finding families.

There are some cases. For the 20 per cent of kids in orphanages currently that might not have anybody in the world that can care for them, or who may be very unsafe at home and requiring alternative care, we made that move to find foster families for those kids while we searched for and looked for family. So for those few kids for whom it was not possible to go back home, in the years that we have been looking, they have been living with a Cambodian foster family, and, for those children now, those foster parents are the only parents they have known. Those foster parents, now that the laws have finally been passed in Cambodia, are going through the process of formal adoption of those children. Instead of those children languishing in institutions and orphanages while the family tracing was happening, they have been forming solid, secure bonds and relationships with adults who love and care about them and who are now going to officially become their parents.

Senator SINGH: Thank you to all of you, and particularly to Sinet for your bravery in sharing your story with us today. I am still interested in how we can assist in combating this demand. Obviously, we have talked about the charities in Australia and ensuring that that advertising of child tourism does not continue. But it seems to me that something more needs to happen in the bilateral relationship between Australia and, say, Cambodia or Nepal to ensure that in country there are laws that are put in place that do not allow for this market to continue. Is that a way that you see Australia being able to assist, other than dealing with the charity issue here?

Ms Winkler: The Cambodian government are very strong in their stance of wanting to deinstitutionalise. The minister of social affairs, veterans and youth has issued a personal plea to stop international donors donating to orphanages. In Cambodia there is an aim to reduce the number of children in orphanages by 30 per cent by 2018. So our actions in Australia are actually undermining the Cambodian government's efforts to try and deinstitutionalise. That legislation and those policies are there. They exist in country.

The alternative care policy for children in Cambodia is good. There is some struggle with implementing those policies at a local level. For the department of social affairs in regional areas, having the capacity and wherewithal to understand their own policies has been difficult, but that is where organisations like CCT step in. We have a team of over 25 social workers, some of whom are based out of the department of social affairs full time, to upskill and train their social workers, to make sure they understand how to implement their own policy. But those policies are there. I think the key is to make sure that Australia, in our actions, is not undermining the policies and the efforts that are happening in country.

Ms Nave: It seems the same. There are feet on the mat and the mat is being pulled. Similar to Cambodia, Nepal also has a governmental mandate to deinstitutionalise children. The orphanage population flourished after the civil war there. Nepal did not have a legal constitution. That only came into play and was voted in after the earthquakes of 2015. So now the laws are able to be enacted, as opposed to a toothless-style tiger standing by.

The problem is, as Tara mentioned, with Australians donating, volunteering and wanting that experience with children, that it is undermining that action because the twain is not quite meeting there. I am at a loss as to how to do that. I do know that when we talk about prevention of modern slavery, one of the key issues we need to raise is awareness. When people have that 'aha' moment, they do not want to be participating in that.

Ironically, I noted down before that it is easier to educate Australian people about going to see circuses that hold animals. It is easier to educate Australians about going to have selfies with drugged tigers. Yet when we speak about children, it is not as easy. So if we have a national campaign or a push from government into

agencies that can help inform Australians as to why it is bad—not just that it is bad but why it is bad—that is where the change can truly come about.

Organisations like CCT and Forget Me Not have a two-pronged attack. We educate in country. We upskill social workers. We work in remote villages educating 13,000 or 15,000 remote areas about the harms of relinquishing their child to a trafficker coming through and offering a golden dream of education; plus we try and work with the Australian public to educate them.

Senator SINGH: Can we get back to the laws in country? Obviously, there are cases where there are children that no longer have parents—whether they were given up by their parents or not, they no longer have parents. They may have passed away from infectious disease, have been killed or whatever. So they are orphaned children. If they are going to therefore have to exist within some kind of institution like an orphanage, you would hope that the rules and practices within that institution abide by the human rights of the child.

What kind of checks and balances are going on in that sense? Sinet's testimony today shows that obviously there was no knowledge of what was going on. It probably is still going on in certain institutions. So that has to come down to the laws in country, surely, to ensure that those orphanages that do continue to exist in that way for that need are abiding by the rights of the child.

Ms Nave: Some of the work that we do in country, in Nepal in particular, is that we facilitate an organisation called the child protection working group. That child protection working group lobbies government—the central child welfare board, the district child welfare board, the social welfare council, the ministry of women and children—to educate and help to upskill those agencies so that they can help to pass laws and acts and then facilitate and behave accordingly to organisations that are registered in their own country. It is a process and it is not called a developing nation for no apparent reason. Some of the ministry offices sit with empty spaces in them; those chairs are not filled. So you are often speaking to an empty position. But we continue to progress.

Senator SINGH: I acknowledge that this is an issue that crosses all boundaries and all countries. We have had a royal commission here in Australia into institutionalised care, but obviously it is an important issue.

Ms Winkler: Yes. In Cambodia now these child protection systems are emerging, and there are alliances working very hard to strengthen these systems. A big part of that is forming and funding family-based care or alternative solutions. For those children who are true orphans and who have nowhere to go, and for those children who are unsafe at home—in the same way as we have children here in Australia where the home environment is so dangerous that it is not possible for the children to stay in the family—Cambodia is trying to establish alternative foster care placements or kinship placements. It is not about continuing to fund orphanages for legitimate orphans; it is about funding better solutions and better alternatives such as family-based care that are centred around keeping those children in families.

There is a minimum standards document in Cambodia which orphanages are vetted against. It is difficult for the government sometimes to enforce those minimum standards because there are so few alternatives. Because funding from Australia and around the world is flooding into these orphanages, it is in some cases the only solution. If there were more family-based care alternatives, we could shut down more of these orphanages, where children are being abused terribly, and have family-based care alternatives for them. So it is a process of moving from the dominant form of care, currently being orphanages and institutions, towards a family-based care model. But our funding should be funding only the solution and the move so that there are alternatives for children to be placed in even during that transition.

Through that transitional period there will still be some institutions. We cannot just close down all the orphanages today because where would the children go? We cannot find the families of all these children and do safe and professional and careful re-integrations overnight. In the interim period, it is totally inappropriate for anybody to ever visit the children in those orphanages. Aside from the impacts children experience growing up in an institution—the development of human brain architecture is totally stunted; parts of the brain die if the child is young enough—visiting children in institutions and orphanages creates a huge child protection risk. We would never allow tourist buses to come from the airport and into our schools, preschools and foster homes to play with Australian children. Even though most of those people are good people and would never dream of hurting a child, that process potentially exposes the children to paedophiles and sex tourists. Also, as you heard from Sinet, the experience of having adults coming in and out of your life constantly is hugely traumatic. In this interim period it is important that Australians know how inappropriate it is to ever visit a child in that sort of environment—especially a vulnerable child who has experienced trauma, whether that be because of the loss of their parents or because of separation from their family.

CHAIR: Is there much large corporate giving? If large corporates are giving, is there potential to look not just at supply chains for large corporates under the modern slavery act but also at reporting whether their corporate giving is contributing to modern slavery as well? Could we consider that?

Ms Nave: In my experience of chasing the corporate dollar to fund our work, often those corporate contacts, if they are giving, are giving via a trusted connection they already have. That might be through somebody who knows someone who is running an orphanage, for example. They raise money, or take bicycle tours or whatever and each participant must raise large amounts of money. It is more about that person having a challenge, going on the challenge and raising the money than it is about the end work. There is money in corporate donations. Some of the corporates that donate to big orphanages or residential care facilities need to be better informed with their due diligence as to what they are funding and not be blindsided by, 'It's okay, because I trust Ms J, Mrs J,' or whoever might be running that facility.

CHAIR: This may be considered to be a more extreme action with regard to the situation, but it may be realistic: given your evidence that we should not be running orphanages overseas to start with, or foster care in the worst-case scenario, would you go as far as to: firstly, ban orphanage tourism altogether; secondly, ban donations to overseas orphanages and, thirdly, ban Australians running orphanages overseas—obviously with a phase-in period to ensure resettlement?

Ms Winkler: Yes to all of those things.

Ms Nave: Yes to all of those things.

Ms Winkler: With one caveat: donors have a lot of power to help shift this model. If the organisation that is institutionalising children can demonstrate that it is in an active phase of transforming, that is also a good solution. That is exactly our story. We were running orphanages and we were institutionalising children. The transformation of that model to a family-based care model is probably the best solution. If we can demonstrate that these organisations are committed to the full transformation of their model, support should be continued in that way. But orphanage tourism 100 per cent is just never appropriate. Whether that is to children who are living in boarding schools, safe houses for women who have been trafficked for the sex industry, or whatever, it is always inappropriate to visit people who have been through trauma. We would not allow it here. It is not appropriate in developing countries, either. I would be 100 per cent in favour of a total ban on orphanage tourism. There is a grey area in funding institutional care. If the institution is committed and is able to demonstrate that transformation, then it is in the best interests that the funding continue, but only for the purpose of funding that transformation.

Ms Nave: I would say the same. I agree with all those three points. We are in a period of going from black into white, and there is a transitional phase of grey. Part of our work is to encourage organisational change. It is to get donors to ask, if they are interested to know: Is it my orphanage that I am funding?—to ask hard and fast questions. We can provide a list of questions so that someone could feel confident they were doing the right things. Is there a re-integration program? Are the children genuinely in connection with their families? Can volunteers just come in unvetted? A whole range of questions can be asked by those who are genuinely interested. We have those kinds of donors who are set and forget. They give money; that is it. But there are those who are genuinely interested, and it is those people who will help generate change.

CHAIR: I mention that because we have in our terms of reference the opportunity not only to look at the modern slavery act but also at other measures that may be necessary to stop modern slavery practices. Thank you for your answer on that.

Senator REYNOLDS: In relation to where to from here, child exploitation in these residential facilities is not yet recognised formally internationally as a form of modern slavery. Would you support it being included in Walk Free's Global Slavery Index and also by the ILO?

Ms Winkler: Absolutely.

CHAIR: And in our legislation as well?

Senator REYNOLDS: There are two issues with that. If we are going to raise it, we raise it in two areas. One is that it is a stand-alone form of modern slavery in and of itself, but also children who come out of these residential care institutions—I have seen figures—are exponentially more likely, as they leave that institution, to go into some other form of slavery: sexual exploitation, bonded labour, domestic servitude. Is that something you see? Are children like Sinet—not that you are a child anymore, but as you were in the facility—much more vulnerable as a source of people for slavery?

Ms Winkler: Absolutely. You can ask about Sinet's plans for what she was going to do if we had not come along and got her out of that orphanage; it was exactly that.

Senator REYNOLDS: What were your plans, Sinet?

Ms Chan: I would run away; there's nothing else I can do. I would run away back to the community, because I do not have family. Back then, I was planning to run away and be a prostitute girl.

Senator REYNOLDS: Thank you.

CHAIR: Thank you for your evidence, once again, and particularly you, Ms Chan, for coming all the way from Cambodia and sharing your story with us.

FLANAGAN, Ms Karen, Child Protection Advocate-Senior Adviser, Save the Children

MATHEWS, Ms Leigh, Coordinator, ReThink Orphanages

NHEP, Mrs Rebecca, Joint Chief Executive Officer, ACC International

[11:47]

CHAIR: I now welcome representatives from Save the Children, ReThink Orphanages and ACC International. Thank you very much for your evidence via your submission and for taking the time to give evidence in person here today. Do you wish to make any comments on the capacity in which you appear?

Ms Flanagan: I am the Child Protection Advocate, the Senior Adviser, for Save the Children. We work both in Australia nationally and internationally, primarily in the South-East Asia and Pacific region, but I also hold a global role on the Child Protection Global Theme Steering Group.

Mrs Nhep: I am the joint CEO of ACC International. I also chair the subcommittee for ACFID's child rights community of practice, which is dealing with the issue of residential care.

CHAIR: Thank you. I will first allow each of you to make a brief opening statement. I note that because we are about 15 to 20 minutes over your regular time, I am happy to go 15 to 20 minutes over time to ensure—if we need it, of course—that you are allowed the full time to give your evidence. I will start with Ms Flanagan for a brief statement and then move to the right.

Ms Flanagan: Thank you. On behalf of Save the Children and also ReThink Orphanages, we want to thank you; we appreciate all the work the committee is doing. We are delighted to be here. My statement is that we support the introduction of a modern day slavery act because we believe it would be a really strong message to the community in terms of raising awareness on the position of children in society, that they are not there to be exploited. That is basically the primary tenet of our submission.

We work in 120 countries. We work with 100 million children and families all over the world, and through that work we have come to learn numerous things. One is that children are best placed within family care. Primarily, most of our work, if not all of it, aims to support families—whether they are poor, uneducated or unemployed—to fend for themselves, to be independent, to live a life of dignity and to provide for their own children. Our submission comes really from a primary prevention, early intervention aspect, not reactive. We do some reactive work, but most of our work is through the provision of family strengthening, positive parenting and education and awareness.

We also work closely with the governments in all of the countries that we work in. In each of the countries in which we work there are different drivers of institutional care for children. We have done our own research which clearly shows that institutions are never good for children. Regardless of how poor families are, if they are educated and given a hand by the government in question and are not relying on Australian aid all the time we will see much better long-term results for children.

That is why our programs are, first of all, based on all child safeguarding principles and a do-no-harm philosophy. I was involved in developing the first ever Australian aid child safeguarding policy, or child protection policy, and we have led the way in that. I think we also can lead the way in this regard. We want to see much more accountability for organisations, whether they are government or non-government organisations, on this issue. That is why I think an act would help us. It would give us more leverage around the issue. We want to mostly educate Australians and well-meaning people. We would like to do that through our work, but legislation is usually a good message to people.

We also want to fulfil our commitment to the sustainable development agenda, particularly 16.2, which is to end all forms of violence against children. That certainly includes institutional care, which we would say is a form of emotional violence, neglect and all of the other forms of abuse as well. That is basically the tenet of my submission.

CHAIR: Thank you.

Ms Mathews: In addition to my role with ReThink Orphanages I also work as a consultant. I work with charities and private sector organisations to help them transition away from institutional care. I will also give a perspective on that. ReThink Orphanages is a cross-sector initiative. We work to prevent the unnecessary institutionalisation of children overseas by shifting the way Australia engages with overseas aid and development. The demand for orphan experiences by well-meaning Australians is directly driving the unnecessary separation of children from their families overseas and their subsequent institutionalisation in orphanages, shelters, children's

homes, boarding schools and children's villages in countries such as Cambodia, Thailand, India and Nepal—to name a few.

The voluntourism movement that drives this has gained significant momentum over the last few years, with tourists wanting to travel responsibly and give back to local communities in destination countries. Meeting this demand are charities and private sector operators who provide tailored voluntourism experiences to customers, allowing the traveller to give back while enjoying their travel experience.

The voluntourism industry is worth an estimated \$173 billion. The rise of this industry has seen a sharp increase in the number of orphanages in developing countries, despite the number of actual orphans decreasing and the orphanage model of care being far from best practice in the care of vulnerable children. If there are fewer orphans but a higher demand for orphan experiences then where do these children come from? The short answer is they are often removed from their families through wilful deception on the part of orphanage directors, bought, sold and leased from families and even between orphanages—a form of trafficking.

Children in orphanages are often kept in slavery-like conditions, fully owned by orphanage directors and exploited for profit through forced cultural performances for visitors, forced begging for their own care and forced interaction and play with visitors. It is very much in the orphanage director's best interests to keep children in poor health and poor conditions to elicit more donations and gifts from tourists. Orphanages are almost always found within or in close proximity to tourist areas, making it convenient and accessible for time-limited tourists to arrange a visit to play with orphans and make a donation, little of which actually reaches the children, with material donations often being sold directly back to local markets.

Australia is a major sending country for the flow of people, money and resources to residential care institutions overseas. Our involvement in the industry is complex and widespread with involvement from the charity sector, the travel sector, business, faith and education. These sectors and their involvement are highly intertwined. Australian charities, travel companies, schools and institutions are directly facilitating the flow of people, money and resources to residential care overseas, which directly results in children being removed from their families and placed in institutions.

Travel and tourism businesses in Australia are both meeting and fuelling the demand for orphan experiences while the private sector provides financial, volunteer and in-kind support through corporate social responsibility programs. Australian schools and universities are directly contributing to this by engaging in overseas trips, study tours and volunteer placements, many of which are facilitated by for-profit businesses in the travel sector. There is no regulatory mechanism in the travel sector to address this issue, despite the incredibly high risks to children.

We are working to address Australia's role in this through research, public education and engagement with those target sectors and advocating for policy change at a government level. We are the only network of this type in the world that is tackling this issue systemically from within a single sending country. We believe the support of residential care institutions and orphanage tourism is directly perpetuating a form of modern slavery for children in developing countries. We strongly recommend that Australia adopts a modern slavery act and that this act specifically regulates the flow of people, money and resources from Australia to residential care institutions overseas.

CHAIR: Mrs Nhep.

Mrs Nhep: Thank you to the members of the committee. It is incredibly encouraging to see that this issue has gotten to this level of really being considered as a part of Australia's inquiry into modern slavery. I have been working on this issue of care reform for 17 years now, so it is something that has been building for a very, very long time, and it is very encouraging.

ACC International, as well as member organisation ACFID's child rights community of practice, assert that the active recruitment of children from their families and their communities into institutions where it is for the purposes of foreign funding or for voluntourism is an act of child trafficking. We have worked with over 60 institutions privately run by local organisations and international charities to walk them through the technical aspects of transitioning them from institutional care to non-institutional programming across 10 different countries.

This work has given us significant insight into this aspect of child trafficking. We have come across countless cases that involve the coercion and deception of families, involving the recruitment of children actively both by intermediary recruiters or by orphanage directors themselves. They involve the movement and harbouring of these children in institutions and their exploitation in various manners whilst in care for financial purposes. What has become apparent to us in our work in the care reform sector is that orphanages are an incredibly lucrative

industry and this industry is driven by the desire of foreign donors to fund orphan children and volunteers to have an orphan experience while they are travelling overseas.

The orphanage industry is dependent on two sets of factors. On the supply side, it requires a sufficient number of children who live in institutional care who can adopt this persona of being an orphan. On the demand side, it requires donors and volunteers who desire to assist orphan children through paid volunteering or through foreign funding. But in the absence of a sufficient number of legitimately orphaned children or children who legitimately require that last resort and temporary form of care that is institutional care, these children are being recruited out of their families, often through these coercive and deceptive means, with no regard for their best interests and with no regard for their broader child rights in order to meet this demand and generate a profit. Furthermore, their identities as orphans are being constructed either through the falsification of documentation such as death certificates or abandonment certificates or through the fabrication and misleading donor communications that are promoted to the outside world to elicit this foreign funding.

Australia, as a significant donor country and a significant volunteer sending country, is a key country that is driving the demand side of this orphanage industry. Whilst we have no current mechanism to quantify the scope of Australia's involvement across all sectors, ACCI recently commissioned a set of questions in the National Church Life Survey. This is the second biggest survey in Australia next to the census and the results reveal to us that 51 per cent of Australian church constituents that were interviewed and surveyed as a part of this research were funding institutions overseas and seven per cent of Christians who were going overseas to volunteer were doing so in the capacity of institutions.

In light of this situation, it is our view that Australia, as a signatory to the United Nations Convention on the Rights of the Child, has the responsibility not only to uphold the principles and articles of the UNCRC not only within our borders but for all children that Australia comes into contact with, including through our foreign aid and our voluntourism sectors. The UNCRC explicitly states that each child has a right to be raised in a family environment and, where possible, by his or her parents. And this is out of that recognition that family is the best environment most conducive to children's holistic wellbeing and development and the extensive body of evidence that points to the detrimental impacts of institutional care on children's social, emotional and cognitive development.

The United Nations guidelines on the alternative care for children, which supports the UNCRC principles on alternative care, locate institutional care as the last resort and temporary form of care on the continuum and further state that best interests determinations for each child should be the determining factor for their placement in any type of alternative care, including residential. However, with respect to a significant proportion of the eight million, estimated, children living in institutions overseas, these rights and these provisions are being ignored. They are being placed in care for profit motives with no consideration for best interests determinations or their rights, and in many contexts this constitutes an act of child trafficking.

For Australia to uphold the articles of the UNCRC with respect to children overseas in institutions, it is going to require a commitment to develop mechanisms within our Australian legislation, within our policies and our regulatory frameworks to address the supply chains of our charity sector and also our tourism sector. This is in particular because volunteers are paying for these orphanage experiences, therefore, making it a supply chain issue. And these legal and policy provisions need to be nuanced. We do not want to get into a position where organisations who are supporting care reform or whose programs are in alignment with the UN guidelines on the alternative care for children or the UNCRC are blocked from being able to support children overseas, but we want to make sure that it does prevent the situation where children become a commodity in a supply chain.

CHAIR: Thank you very much for each of your opening statements. I will start with a question then move to other members and senators on the subcommittee who may have further questions. I raised with our previous witnesses a few questions particularly about their evidence that we should not really be running overseas orphanages at all, that really foster care should be the last resort and ideally with a family as the best option. Would you agree with going as far as (a) banning orphanage tourism altogether, (b) banning donations to overseas orphanages with a caveat that those funds can be redirected to more useful means to actually put children back with their families and so forth and (c) banning Australians running overseas orphanages, obviously within a time frame, to ensure resettlement actually occurs and children are not abandoned?

Mrs Nhep: I would ban orphanage tourism emphatically. There is no place for tourists or voluntourists interacting with children who are highly traumatised in institutional care. In terms of banning the funding of overseas residential care centres, I think that lacks nuance to make it a black-and-white call of that nature. We need to be aligning with the UN child rights framework, which is international law, and our provisions for allowing charities to engage with children overseas in institutions or in other forms of alternative care needs to

enable organisations to demonstrate their alignment with that child rights framework. Therefore, it cannot really be, in my opinion, as black and white as saying that we fund them or we do not fund them. They are a part of the continuum. Institutional care is a part of the alternative care continuum that is, again, a part of that international child rights legal framework.

However, it is supposed to be temporary and last resort. So we really need to be developing mechanisms that allow the Australian charities to demonstrate how they are aligning with that, how they are making sure that what they fund is not pushing children into that last resort without actually providing the mechanisms that should come before that but also still allow organisations like Save the Children, like ours, like other organisations, to support institutions to go through that reform process in a safe and effective manner. We do not want children to be on the back end of this being sent home without due process.

Ms Flanagan: Can I just add that the work that we are doing is very much about working with the governments to shift the policy paradigm that allows it. So it is part of that education process. But we have already successfully shown this in countries such as Indonesia where the driver for orphanages is a completely different thing. But it shows in a country of so many people that you can actually start to make some good headway.

Also I think the important point is working with tertiary institutions about training the workforce. We do a lot of workforce development because there is no point in deinstitutionalising if you do not have a workforce of social workers or case managers to find those children, work with those parents and reunite them and know how to do risk assessments of which families are safe or not. So that is a large part of our portfolio, doing just that. We have actually had to rewrite social work courses, for example, because in Indonesia people were only trained to work in institutions, not to work with families and do case management.

The final thing for Australia in the DFAT-ANCP funding head agreement is that it specifically says that overtly we cannot use that money to fund institutions. Therefore, we need consistency from the Australian government. They are already saying it in certain places. So we have to show that we are not supporting institutions but we do uphold the UN guidelines on alternative care. We have to make those things really, really clear.

CHAIR: Do you have any further comments?

Ms Mathews: No. I would support both Karen's and Rebecca's statements on that.

Senator GALLACHER: We have heard this morning and all been educated, I think, about the sector you are talking about. Why does this sector need to be treated under the modern slavery act? Why have you not got other legislative areas or policies where you can have your concerns sorted out? Why does it more particularly have to come under this sector?

Mrs Nhep: I think it is a really emerging area. For this to be considered trafficking means that having it included in this legislation would really enforce that. The first evidence that we have of that happening globally has been the recent inclusion in the US State Department's report on trafficking of persons in Nepal, which accepted the legal argument and, therefore, registered it as an issue. This is really the first time that that has happened. To have that legitimised in the Australian legislation would help us look at how it can then be included in other provisions such as the OAGDS, under the other DGR categories and the ACNC as well. I think getting it in here is accepting that this does constitute a form of trafficking.

Senator GALLACHER: I note that it did not occur in the UK, did it, the modern slavery act? Was a similar argument put?

Mrs Nhep: There was some evidence provided, and Kate van Doore will be able to speak to that, because I know she collated some of that evidence and submitted to them. Whether that was prior or after, I am not sure. But I know their legislation obviously looks more at the business supply chains and at a certain level as well. No, there is no inclusion.

Senator GALLACHER: So clearly you say this is where it should sit? If it is in here, it will make it easier across a whole spectrum of policy?

Mrs Nhep: Absolutely.

Senator GALLACHER: And areas of government?

Mrs Nhep: Because you have got two issues. You have got the fact that institutionalising children violates children's rights. Then you have got the fact that a certain subsector of this, being the recruitment into care for voluntourism or foreign funding, is an act of trafficking.

Senator GALLACHER: Very succinctly put.

Senator REYNOLDS: On that question, we have had testimony that once they are in these institutions they are subject to a form of slavery.

Mrs Nhep: Yes.

Ms Mathews: Yes.

Ms Flanagan: Yes.

Senator REYNOLDS: And the important thing to recognise is that, irrespective of how children have been trafficked or how they have got there, they are actually in slavery-like conditions.

Mrs Nhep: Absolutely, yes.

Senator REYNOLDS: Thank you very much to all of you for your advocacy in this area. I am just wondering if you could comment a bit further. Following on from the deputy chair's question, having a look at this in a fresh way obviously would mean that we are pretty much the first country to tackle this issue head on. There is obviously identifying it and picking it up in the legislation itself. We have talked with other witnesses today about other things that can be done in terms of education, in terms of charities but also obviously in terms of if the money tap turns off for these for-profit organisations how do we make sure that the children in those facilities—eight million-plus of them—are not worse off? Perhaps from all of your perspectives, how do we factor that into our deliberations here in terms of our report?

Ms Flanagan: That is exactly why the bigger INGOs are working on those system-strengthening issues, making those governments in those countries take responsibility for their own children and say, 'These are your children.' So it is lifting the profile, the rights and the human dignity of children in those countries. All of the Australian aid money that Save the Children receives goes towards doing just that. So you must get the government of the day in the country to take responsibility. That is No. 1. This is why only addressing the reactive part just does not work long term. We need a sustainable solution. That is No. 1, coupled with, as I said earlier, the preventive work and the educative work that children are not just little receptacles for food, clothing and education, because that is often what we hear.

People think if they have fed and educated their kids they have done a great job. It is understanding the psychological and emotional needs that children have to grow and thrive and the impact of separation. So doing that work in the field, on the ground, through our programming portfolios and then, of course, building the evidence base to support it because it is a new, emerging issue. So we do need the evidence to back it up. Certainly you cannot do one. It is part of the primary right through to the tertiary. But more focus needs to be on the prevention, early intervention side, I would say.

Senator REYNOLDS: That is on both sides of the equation, countries like Australia that send the money and the people over, educating and stopping that, and redirecting that money into something more constructive?

Mrs Nhep: Yes.

Ms Flanagan: Constructive and sustainable.

Senator REYNOLDS: But then doing the work on the ground. We have heard what is happening in Nepal, for example. They are going out and educating family and supporting them to stay together.

Ms Flanagan: Yes. And the workforce to do it with is the critical bit, because often there is a vacuum, and that is what we are finding. In the past we have done a lot of reactive work. We have run around dealing with child sex trafficking and singular issues such as child soldiers, whatever. But we have not actually addressed the system to take care of it whenever we do the awareness.

Senator REYNOLDS: I asked this of the last panel: in terms of getting it recognised in, for example, Walk Free's global slavery index, I think it would be very important and also in the ILO measures not only as slavery in and of itself but also that children in these institutions are much more vulnerable and are more likely to go into other forms of slavery once they have left the facility. Is that something that you see, that these children, once they become adults, or young adults, are more likely to go into domestic servitude, sexual servitude?

Mrs Nhep: Absolutely.

Senator REYNOLDS: Have you got some examples of that? Is that a message as well? Is it not only are they slaves but they are actually then fed into other forms of slavery?

Mrs Nhep: Yes, they do. I will give you an example.

Senator REYNOLDS: Please.

Mrs Nhep: I spent 11 years in Cambodia. We worked on developing the country's first foster care system there with the government. And one of the young care leavers we came across very early in the piece, back in the

year 2000, was part of the first generation of care leavers leaving institutions that had been set up by foreign organisations who had come in when the country first opened up in the 1990s. She left care. She had eight siblings. Seven of her eight siblings were living in this institution. One was at home with her mother, who was alive throughout this whole time. It was a poverty-related issue. The children were not at risk of significant harm. They did not meet a child protection threshold in that traditional manner when they were brought into care. They were brought in because of poverty and education.

By the time that they left care one care leaver, she was not a child at the time, ended up being trafficked. She was first put into quite a coercive situation and then out of that situation was legitimately trafficked. One of the young men ended up in a drug cartel. He was recruited as soon as he left the institution and ended up in a drug cartel and then he ended up in jail. Another one of them ended up being stripped, date raped, ended up pregnant at the age of 17 and ended up in a crisis pregnancy service. And one ended up with mental health issues. So in that one family it was like looking at the full statistical set.

Ms Flanagan: If I might add?

Senator REYNOLDS: Yes, please.

Ms Flanagan: At the other side of it is the work and migrant issue, which is, again, another big driver. For example, in Thailand, in Mae Sot, there are a lot of migrant children being left in boarding schools, which are institutions. The person who teaches them during the day would be an 18-year-old with no formal education. We train these teachers in basic literacy and numeracy. Then they also sleep with the children at night because their parents are leaving Thailand to go back to Myanmar or vice versa. But the children are abandoned. Two weeks ago the Thai government announced that they were cracking down on illegal migrant labour, except for domestic servants, though, because that might have impacted on their lifestyle, and certain forms of labour. And then everybody fled and left the children behind. The teachers fled, and we had all these children left not knowing where their parents were and whether they were going to come back.

The orphanages run mainly by Christian groups in Mae Sot are just growing. Every time I go there, a few more new ones have opened. This is the migrant workforce issue. Then these kids also end up going across the border or are being sent for labour. That is a big issue for us as well.

Senator REYNOLDS: Another organisation that has made a submission, Lumos, have a campaign about the importance of having these children documented. Most of the children in these facilities, apparently, around the world are not documented, which makes them even more vulnerable, because no-one has visibility of them, it is easy for them to disappear and horrible things happen to them. Is that something that you are aware of, about the documentation of these children?

Ms Mathews: We do not truly know how many children are in institutions globally. A lot of the more recent figures that have come out are based on government figures, which are the official government census data. We know that there are thousands and thousands of children that are not counted in those. If you do not know the scale of the problem then you cannot account for the intervention or the response. So it is really important that we are able to document these children, not only children in institutions but street-living children and other vulnerable children, to enable an appropriate response to them. Having real data on the number of children in institutional care globally is one of the biggest goals for the sector, I would say, to really understand the scope of the problem and how to respond to it.

Mrs Nhep: If you could take one country, for example, Cambodia, when they started mapping the institutions, approximately two-thirds of the institutions are unregistered. So they are unlawfully operating. Children are in those homes with no transfer of guardianship and no formal documentation. Therefore they are not on the government's radar. So when the government is monitoring and assessing homes, two-thirds of their homes are not being assessed and those children's welfare is not being looked after. That is not uncommon.

Senator REYNOLDS: That was quite evident in the recent Cambodian government report. When they went looking, they found far more of these institutions and children than they ever thought were there.

Ms Mathews: And wildly different numbers over years. Colombia, for example, did a report on research which again gave a different number than the official number.

Senator REYNOLDS: One of the things I would like to get your thoughts on is that you are talking about the orphanage experience and fuelling the desire for voluntourism; the facilities are located near tourists, so they can readily access it—pop in, have an orphan experience, take a few selfies and then leave feeling really good about themselves and posting a thousand pictures on Facebook. Again that is all about me, isn't it? It is all about, 'I feel good. I've done this, and it's now real because I actually posted it on Facebook, Instagram, Snapchat,' or whatever else. While there is good behind that intent in some form, if we do what you are suggesting, which is to pretty

much ban orphanage tourism, but you still have people's desire to do good or at least to be seen on Facebook—'What a good person am I?'—how do we perhaps reshape how people can still feel good about themselves and parents can provide children with a character-building 'aren't you lucky to live in our household' experience without actually doing harm to the kids?

Ms Mathews: That is a really important point because people genuinely, most of the time, do want to help. The way I would suggest approaching it is from that systemic perspective where the onus is not on young people. It is not on school students to make ethical decisions about what kind of voluntourism program they are going to engage in. The onus is on the businesses, the schools, the entities that are offering a suite of products for young people to do good. They need to be accountable. They need to have the best interests of the communities that they are engaging in these projects with at heart. And that is the problem. We can talk about teaching our young people critical thinking, but it is not on them. It is on the systems around them.

Senator REYNOLDS: And on the intentions. There was a very interesting article by a journalist who was writing about this, who said we need to start with ourselves, and be honest about our own intentions of why we actually want to go and do this. It can be quite painful. How do you think, practically, we can shape it—take that generation who are very compassionate and do want to share it with everybody on social media? How do we reshape that into something that is not harmful?

Mrs Nhep: There is a degree of there being some alternatives. We are all very aware that there needs to be the development of the alternatives in order to see this shift really take place. The bigger narrative around that is the understanding that we also need to challenge this white superiority that drives a lot of this. We need to bring it back into an education context. We need to be building into curriculums a deeper understanding of who we are in these global narratives and who we are not, and not playing into the wrong narratives that will fuel a different expression of orphanage tourism once we close this down. Ultimately, the narrative which supported it has not been challenged.

Senator REYNOLDS: It is quite paternalistic. Are you saying we always have quite unwittingly a very paternalistic approach to helping poor kids?

Ms Mathews: Absolutely.

Mrs Nhep: That is right.

Ms Mathews: Anecdotally, one of our members shared that, in Siem Reap in Cambodia, there has been a lot of focus in Cambodia on this issue, and expats living in that city are now educating new arrivals on not to go and engage in orphanage tourism or not to go and visit an orphanage. What is happening is that now they are just turning up unsolicited at schools, with bags of gifts and toys, and just turning up on bicycles, in busloads or taxis, and just walking into a schoolyard. So we have to be aware that it will shift, and how can we regulate the organisations that provide these experiences or connect people into these experiences?

Ms Flanagan: Remember that we had the big campaign on child sex tourism—don't walk away, report it et cetera. It is almost that we have to do that again, but I was hoping we were a wee bit more sophisticated than that. Do you know what? If we have to tell you on a cigarette box that it is bad for you, maybe we have to go back to those tried and true methods. I think there is a lot of motivation that is tapping in, and building constituency. Most people, and young people, in particular, want to get involved in more edgy kind of things—hence child sex tourism. People are curious about that. This is also resonating with people. So we have to build the momentum around that, based on the premise that you are going to do some good here, but we need to understand the principles of do no harm and what is driving it as well.

Ms Mathews: I would also like to raise the duty of care that travel operators and charities have for young people engaging in these types of tours. We are taking young people overseas to experience environments they have never seen and then we are taking them to engage in a product or an activity that is inherently harmful to the children within that activity; therefore we are facilitating an involvement of young Australians in the harm of children and what could be—

Senator REYNOLDS: Arguably, you are saying what Australian parents, Australian schools, Australian church groups and the travel agents and companies that facilitate—they pay, and then that money goes on—we are actually facilitating trafficking and slavery?

Mrs Nhep: Absolutely.

Ms Flanagan: Or abuse and exploitation.

Senator REYNOLDS: Or abuse and exploitation.

Ms Flanagan: Psychological vicarious trauma.

Ms Mathews: Absolutely. And the duty of care. We are involving young Australians in these practices.

Senator REYNOLDS: And the money that they have so diligently raised is actually paying people traffickers?

Mrs Nhep: Yes.

Ms Mathews: And what happens when these young people come back to Australia and they learn what they have been doing?

Mrs Nhep: Yes. We get those stories all the time. Five years later, they realise they were involved in something that was inherently detrimental.

Senator REYNOLDS: I want to pick up on the theme that you have raised about paternalism and promoting and encouraging practices overseas that we would never accept here for our own children. The example you just used then was of bringing gifts. People used to bring gifts to so-called orphanages which would get sold on and were not for the use of the kids, but now they are trying to drop them off at schools. That demonstrates that they have not engaged locally and asked, 'What do these children in this classroom actually need?' You get stories of iPads and all sorts of equipment being delivered, but they do not stop to think there is no power or connectivity to use them. Is that part of the solution—actually educating people? Instead of just bringing bags of toys—which might be nice, but is it what they really need?—how do we educate people about that?

Ms Mathews: It is also about stepping back and looking at the assumption that you need to come and bring something. You do not need to. There are organisations there on the ground that are doing good work.

Mrs Nhep: And locals.

Ms Mathews: Yes.

Senator REYNOLDS: Does that relate to the point where people want that orphanage or orphan experience and, being once removed, if they give, they actually do not feel connected and they do not have the photos or the experience to say—

Ms Flanagan: Yes, that is it.

Mrs Nhep: Yes. But that is the—

Senator REYNOLDS: Knowing about the good that you are doing is not enough; you actually want to personally be seen to be doing it.

Mrs Nhep: Yes. And that is where you need to challenge the bigger narrative. We have done some alternative work with our organisation. We take young people and groups from churches and so forth over, and they do advocacy tours. They do not touch anyone. They do not cuddle anyone. They do not give out anything. They come and they sit with NGOs and they learn about the issues at a systems level, at a programming level. They come back to Australia where their locus of power legitimately is, because it is not there. And they advocate in this space. They work out which organisations are doing good practice. They raise money. They talk about the issues. They advocate in this space where they have legitimate power and networks. But they realise that they are not actually necessarily needed over there to do the ground work. That is done by local organisations and those who have developed an expertise over time.

Ms Mathews: I think we are starting to see some shifts in the travel sector. I know personally where I have worked with some clients in the travel sector. One of them is one of the largest providers of school tours to orphanages in Australia, the UK and New Zealand. They have been very proactive. Almost all of their tours have engaged in some form of orphanage tourism. They have recently agreed to cease all forms of engagement with orphanages and to replace the component where they visit an orphanage with an educational session that talks about the challenges that children face in the country, in the destination country, and what they can do in terms of being a change agent when they go home. It gives them a critical framework to reflect on the experiences that they are going to have over those two weeks in that country.

Ms MADELEINE KING: Thank you, everyone, for coming in and for your submissions. It has been really interesting. I have a question for ReThink Orphanages about your report. I am quoting from the introduction; I know there is a longer report, mapping everything, which is really informative. You state:

Approximately 75% of Australian charities working overseas work with children, and almost 10% of these are involved with, or support residential care institutions ...

Another point you raise, among other things, is:

22 Public Benevolent Institutions (PBI) are directly supporting residential care institutions overseas ...

My question in relation to that, on that 75 per cent and then the smaller 10 per cent and then the 22, is: are they identifiable, so that they might be compelled to report on the work they do via legislation or to ensure they have conducted the due diligence as to the institutions? There is clearly a question as to whether you have institutions at all, but let us talk about the due diligence. Is it a possibility that we could identify them and have legislation that compels such groups to do—

Ms Mathews: That is a really interesting question. There is a possibility that we could do much more. That research relied on ACNC data, but it was also backed up by desk research and lots of trawling through the internet. One of the challenges we face in terms of understanding the scope of the problem here in Australia is a lack of data. The ACNC is not required to specifically question organisations about whether they have residential care or not. There is also no framework within the compliance to look at residential care and how much money is flowing to—

Ms MADELEINE KING: Or working with children.

Ms Mathews: Or working with children. It is very loose. So we would appreciate much more regulation and reporting around residential care. It would enable us to look at the flow of money, people and resources.

Ms MADELEINE KING: And question those charities as well.

Ms Mathews: Yes.

Mrs Nhep: The OAGDS framework—the Overseas Aid and Gift Deduction Scheme—is one of the key ones to look at. It has tax deductibility guidelines that have to be followed for the assessment of organisations to be able to send tax deductible funds overseas. Right now we have that and the PBI scheme. A couple of years ago PBI was only for within Australia, but then a court case went through, and it is now open to organisations to apply for PBI to send funding overseas. So you have these different frameworks that organisations can apply to and accredit under that have different levels of guidelines or reporting requirements. OAGDS used to have specific exclusionary provisions around funding institutions. They were removed in the more recent review of those guidelines. In some senses you could say that removal was a backward step; in others it was a forward step in that they added a lot stronger human rights language into that framework. If there were the technical knowledge to apply the present human rights framework to this issue of children in institutions, a significant number of organisations funding institutions under that OAGDS scheme would be excluded under those existing guidelines. One of the low hanging fruits is to see those guidelines utilised by developing an understanding of this child rights framework, using the human rights language in the country guidelines.

Ms Flanagan: We can learn from AusAID and DFAT's experience of implementing the child protection policy aka child safeguarding. Initially people said, 'You can't do that. You can't tell people how to spend the money'. Yes, you can. You must monitor it. There is a whole risk and compliance section in DFAT and we all are accredited every five years. They go through everything with a fine-tooth comb, and that is a good thing. We have to assess our partner organisations. Some of these partners may well have been engaging in some of these things. The onus comes back to us, and DFAT holds us to account if we have not taken all the steps to make sure that the money has not been used to harm children. We have mechanisms in place that we can learn from or expand on. The government has shown an appetite for that.

Ms MADELEINE KING: This is grants from DFAT and Australia; is that right?

Ms Flanagan: Yes.

Ms MADELEINE KING: The agreement with the federal government; that makes sense.

Mrs Nhep: Yes, but we need consistency of application, because you have three tiers: you have charity, you have OAGDS, and you have the ACNC program. This is the highest level of standards. Even if it was the OAGDS across the board we could have some consistency of saying there is a stance, particularly with anything that is government-incentivised. If it is tax deductible there is a level of government incentivising on that funding, so there should be a consistent guideline that does not allow that funding to be used to encourage the trafficking of children.

Ms Mathews: A good example under the OAGDS is auspicing organisations like ROWCS—Rotary Overseas World Community Services. Another one is called the Global Development Group. They auspice a number of organisations overseas that run residential care.

Senator SINGH: A number of organisations would not get any ANCP or government funding.

Mrs Nhep: Absolutely.

Senator SINGH: Charities that rely on the public would fall out of that framework.

Mrs Nhep: But the OAGDS framework was designed to capture them. If they were sending TD funding overseas, they had to be registered under that until the PBR scheme was broadened to include organisations working overseas. But that is a more recent inclusion. Prior to that, they had to be under OAGDS, but many were operating contrary to the guidelines.

Ms MADELEINE KING: Another question specifically to you, Mrs Nhep: you mentioned that legislation should examine the supply chain issues with charities. What is in the supply chain of charities?

Mrs Nhep: Charities, within their supply chains, have their individual donors. They have the narratives that they present to donors. Depending on how ethically the charity is operating, it is often just secondary exploitation of trauma. In our charity sector here a lot of the way we market to the public is pity marketing. We are trying to illicit a sympathetic reaction, a pitiful reaction, through which people then fund. So here you have the children to whom these narratives need to be attached. They need to be the face of this trauma to the Australian public to illicit that reaction and the donation. That is the supply chain.

Ms MADELEINE KING: Okay.

Mrs Nhep: The problem here is that the narrative being attached to the children is a false narrative and the children need to be kept in a situation which is detrimental to them and which violates their rights to keep the funding flowing.

Ms Mathews: With the increasing awareness in the charity sector about the harms of the orphanage model and orphanage voluntourism, we are seeing Australian charities that run residential care models almost whitewashing their public facing material to say, 'We are not an orphanage,' when they are a residential care institution. But with the increasing public awareness, they are changing their language.

Mrs Nhep: Or they are telling their donors, 'Our children are legitimate orphans'. Our organisation works extensively with these smaller organisations to transition them out of this space. When we do the assessment on the organisations that have told their donors they are all orphans, I have never been able to count more than three or four children in a given institution who legitimately have lost both parents. The donors are unaware that these narratives are being falsified.

Senator REYNOLDS: That has been very helpful; thank you.

CHAIR: Do you have examples of what other countries are doing to address the issue of orphanage tourism? What is the best example you can find around the world, or is it an issue that no country has taken any action on?

Ms Mathews: We are leading the way in tackling this at a systemic level. We are the only country in the world that has a body like ReThink Orphanages that is coordinating the efforts and bringing together everyone working to the same goal. There is a global network that is working to address this, and focusing on the voluntourism aspect of things. Recently Sweden set up a task force within government to address this and they have just had a website go live which is aimed at educating the public and charities to do this—but nothing at the level of what we are doing here.

Mrs Nhep: Ireland put some provisions in its tourism code recently to look at this specific issue but not the funding of institutions; more the voluntourism aspect of it there.

Ms Flanagan: Ireland's on fire at the moment. I should not have left—gay marriage, children's rights issues.

Mrs Nhep: In New York some meetings recently were looking at this as an issue of incarceration of children as well. That is potentially the next way this issue will be looked at—involuntary incarceration as another violation of rights issue.

CHAIR: Thank you very much for your evidence today, for your submissions and for all the work that each of your organisations is doing around this issue and, more broadly, under the modern slavery umbrella. It is important work you are doing. Your feedback will assist us in looking at what to include in modern slavery legislation and in considering issues beyond the legislation. So thank you very much.

Ms Flanagan: Good luck.

CHAIR: Thank you. You will be sent a copy of your evidence for review.

Van DOORE, Ms Kathryn, Griffith Law School.

Evidence was taken via teleconference—

[12:38]

CHAIR: Welcome, Ms van Doore.

Ms van Doore: Thank you. I appear as an academic for Griffith Law School and as a co-founder of Forget Me Not.

CHAIR: Thank you. I now invite you to make a brief opening statement before we proceed to discussion and questions from the floor.

Ms van Doore: Thank you for the invitation to speak today about the way Australia is involved in modern slavery through orphanage funding, founding and volunteering. My research in this area was instigated by my journey as a young volunteer in an orphanage with a Nepali girl named Alicia. Along with two friends, I helped established Forget Me Not, a children's home in Kathmandu, Nepal, to care for orphaned children in 2006. Alicia was one of our first charges. I first met Alicia when she was four years old. She was so traumatised by her experiences that she did not talk for months. She spent hours at a time with a black pencil in hand scribbling so furiously that indentations could be felt through the paper and seen on the wooden table underneath. Alicia had come to our orphanage from a previous orphanage. There was no history of her short life other than the death certificates of her parents. As a volunteer and child sponsor, Alicia and I became family for the next eight years. As Alicia was portrayed as an orphan to me and living in an orphanage, I did not question her about her family. I will come back to Alicia in a minute.

In 2011 in Uganda I worked with a number of NGOs and government officials in what would later be a child rescue to remove 39 children from an orphanage which was proven by independent investigative audit to be syphoning funds for profit. Prima facie, we believed this to be a standard case of fraud. However, over the following days, after we removed the children from the orphanage, it was revealed that the children were not orphans as initially believed but had been taken from their families for the purpose of being falsely constructed as orphans to reside in the orphanage receive and illicit funding. As we uncovered the complexity of the situation, it emerged that the children's names and identities had been changed to ensure their families could not locate them. In addition to this, the children had been systemically threatened against revealing that they had families and were not orphans throughout their time at the orphanage. In some cases, it had been going on for years. We worked with the Ugandan government to locate the families of the children and reunify them. But this experience led us to closely examine our Nepal project. We soon discovered that the orphans in the Nepal home had also been deliberately displaced for the purpose of creating an orphanage in 2006 with our international funding.

So in 2012 we acted to release those 20 children from the custody of that corrupt orphanage, including Alicia. After six arduous months we achieved what no other international non-government organisation had done before, which was the successful transfer of guardianship of 20 children. Once released, the children advised that they, too, had been threatened with violence if they told the truth regarding their families. This had been sustained for eight years. Once again, the children's families were found and the children have been reunified.

When I began to research the issue I realised it was all too common. Children in this situation are termed 'paper orphans' because they are constructed on paper through documentation as orphans. As young and enthusiastic volunteers with an intense desire to help, we had no idea that we were complicit in child displacement, where children were being removed from their families and produced as orphans for the consumption of Western volunteers wishing to engage with the developing world in a helpful way through what is commonly termed 'orphanage tourism'.

These two situations spanning from Uganda to Nepal led me to consider the legal nexus of child displacement into orphanages, the construction of children as orphans and the ongoing exploitation of the child in the orphanage through exposure to orphanage tourism. This is a form of modern slavery where the children are held in slavery-like conditions for the purpose of profit. In Nepal, child rights advocates have been trying to get child trafficking into orphanages for the purpose of profit listed in the Trafficking in Persons Report which has been produced by the United States since 2005. Last year I published the first legal argument regarding the act of recruiting children into orphanages for the purpose of people volunteering and funding, that being regarded as a form of trafficking under international law. I am very happy to report that the Trafficking in Persons Report lists this practice as a form of trafficking in last month's report for the first time in the context of Nepal; it was also listed last year in the Global Slavery Index in the context of Cambodia. It is accepted internationally now that trafficking into orphanages is occurring and that volunteering and international funding is one of the demands drivers.

This inquiry presents a unique opportunity for Australia to join with developing nations to protect these children. As signatories to the Convention on the Rights of the Child we should seek to protect children, not just within our own shores but across the world. No-one needs more protection than children in developing nations. They deserve our support in the very best of ways. We need to stop suspending the knowledge that we have already gained through our own experiences of child institutionalisation in Australia. We need to apply what we know to our actions in the developing world. We would not allow tour groups to visit our most vulnerable children, so why do we think it is acceptable to do so in the developing nations? We would not allow a continual procession of volunteers to raise our children in Australia, so why do we encourage and, in fact, applaud it when Australians do it overseas? We need to apply what we know to protect these children so we can stop child trafficking into orphanages.

Let me return to Alicia, who as it turned out was not Alicia at all. Her name is Jitkin. Her name was changed in order that her parents would not be able to locate her as they searched fruitlessly for years. In reality, Alicia had living parents who were fully able to care for her, and a brother and sister. Alicia's father had been working abroad in Malaysia and her mother had been beguiled by a cousin into taking Alicia to the capital of Nepal to attend school. But what actually happened is Alicia was taken to Kathmandu by the recruiter and sold to an orphanage. Death certificates for her parents were falsified and she became a commodity, ready for sale to another orphanage as a legitimatised orphan.

Australia has the chance to be innovative in how we regulate our participation in this industry and to lead the world in doing so. I encourage the committee to carefully consider how this might be done so that we can ensure Australians no longer perpetuate modern slavery in orphanages. Thanks.

CHAIR: Thank you very much for your opening submission. I will now pass to members and senators who have questions—firstly, the deputy chair, Senator Alex Gallacher.

Senator GALLACHER: Thank you. One of the questions that immediately comes to mind is that the UK Modern Slavery Act does not cover this sector. Why would Australia take up inclusion into a modern slavery act? Why would we do that versus addressing it in other areas of legislation?

Ms van Doore: This has not been raised as an issue for the UK Modern Slavery Act. In fact, I have just made a submission to the Independent Anti-Slavery Commissioner in the last few months on this issue for them to consider how they move forward with their Modern Slavery Act. The issue there is that their jurisdiction does not extend extraterritorially to children in this situation. So why should Australia legislate for this? We need to ensure that we are upholding the rights of all children, regardless of whether they are in our country or overseas. If our actions are affecting children overseas, we should be paying attention to that. It is not acceptable to us as a country that sexual predators, for example, go overseas to prey on children, and we have legislated for that. So it should not be acceptable to us, when we know the harm that is being caused by orphanage care and orphanage volunteering and funding, to be perpetuating that problem.

We can legislate for this through extraterritorial regulation, just like we have for child sex tourism. Why should it be in a modern slavery act? It is because this is a form of trafficking. It has been accepted internationally now that this is trafficking. It makes sense that, if it is trafficking, it falls under the umbrella term of modern slavery and it makes sense for us to regulate for it in that way.

Senator GALLACHER: So you say that the UK has no jurisdiction in this space?

Ms van Doore: They have jurisdiction. Their act is not extending to this particular instance.

Senator GALLACHER: I think we got some earlier evidence that they did get some evidence in the submission phase of their Modern Slavery Act; they just chose not to go there. I am just trying to drill down as to why we need to do this versus legislation in other areas.

Ms van Doore: I think this is a really unique opportunity that we have to recognise this as a form of trafficking, to recognise our participation in it as a form of trafficking and to look at the supply chains—it is just like in business—and see that how charities are funding and how tourism businesses are sending in volunteers is actually causing harm to these children and is causing modern slavery. If you look at it in the context that it is like a business situation, I think it makes a lot of sense.

I heard Mrs Nhep speaking earlier about the OAGDS scheme and the ACNC and the PBI scheme. Obviously there is some low-hanging fruit there that we could regulate in an attempt to try and stamp out orphanage funding or redirect orphanage funding. But the orphanage volunteering that is happening, particularly through travel providers, is a form of business. It makes sense that if we are going to look at supply chains for business in terms of modern slavery then we would also look at this sort of supply chain.

Senator SINGH: Ms van Doore, you talk about a modern slavery act, which obviously is what we are looking at introducing in Australia, and applying it extr territorially to limit the funding to send volunteers to orphanages overseas. How do you see that playing out—the extr territorial limits on such a piece of legislation?

Ms van Doore: It is a difficult one, I think, but that is not to say it cannot be done. I think it has to be very nuanced in the way that it is drafted. I would imagine that just as we are successfully regulating extraterritorial child sex tourism, in the same sort of manner we could include this in our modern slavery act. We have to get the jurisdiction right, I think. We have to be able to term how Australians are contributing to this problem, so the harm that is being caused. I think it would need some fairly nuanced drafting, but I do not believe it is beyond the legislation drafters to do it. I think they could do it.

Senator SINGH: You talk about our current aid funding structures that need to be looked at in relation to this issue. How best should some of those aid funding structures be changed to ensure that money is not going into perpetuating this form of human trafficking?

Ms van Doore: In terms of charities that are funding orphanages or residential care internationally, as I heard earlier—I think it was Mrs Nhep who said it—it was easier to regulate before the public benevolent institution status came in because a lot of charities were registering through the OAGD scheme. The OAGD scheme specifically excluded welfare-type projects, which included orphanages. So if you were funding an orphanage, technically you could not get approval to send money overseas.

With the opening of the public benevolent institution status, that has changed. There are a lot of charities that are able to send their funding without being registered through the OAGD scheme now. I guess the first step to be taken would be to either regulate the PBIs and how they are sending money overseas or amend that to revert back to the OAGD scheme that we used to have to more tightly control whether or not money is ending up in institutionalisation.

I also heard someone else speak earlier about the whitewashing that is currently happening with a number of charities. We are seeing a lot that charities that are running residential care and orphanages overseas are now terming what they do in community development projects. I think any change or amendment to those schemes is going to require close scrutiny by the government departments that are responsible for administering the schemes when they come to approving and watching what is going on there.

Senator REYNOLDS: Thank you very much for the work you have done on this, Ms van Doore. It has been very instructive to provide a way forward and, I guess, a rationale for this. From the research that you have done, can you talk a little bit more about the business model—so for-profit orphanages, but also where it goes into serious and organised crime? Can you talk a bit more about the methodologies?

Ms van Doore: We have had the experience of a number of for-profit orphanages occurring in these developing nations. It has been documented by the Better Care Network and their particular project Better Volunteering, Better Care across a lot of developing nations through Asia and Africa. There is discussion about whether this is a business model that is becoming a transnational crime or should be considered a transnational crime. My argument is looking solely at whether children who are displaced from their biological families into orphanages should be regarded as a form of trafficking under international law. If it is regarded as a form of trafficking, because of the way the international law is shaped on this, it would be regarded as a transnational crime. That is because the Palermo protocol, which is the trafficking protocol, sits under the convention on transnational crime.

The key is looking at how this is occurring domestically and the business models that are springing up. We have evidence, and research has been done, that there are orphanages who are keeping children in very poor states. They are deliberately keeping them malnourished, without medical treatment and out of school in order to garner more donations, to the point that some of these orphanages will change the photos on the wall depending on what volunteer group is coming through next. Each volunteer group may well think that they are the sole funders of the particular orphanage, but as soon as that volunteer group leaves, another photo goes up on the wall for the next volunteer group that are incoming.

The latest report that we have had on this was in Haiti. Lumos have done that report. I believe Lumos are also giving evidence perhaps next week. They have estimated that out of the United States alone, \$70 million is going solely into Haiti per year into orphanages. So we are talking a lot of money here. We have not had a similar study out of Australia on that. That is something that is yet to be done, but we do know that we have a substantial number of organisations who are sending money overseas to orphanages, and a lot of them are not registered. A lot of them are churches or school groups. They are just mum and dad tourists who have been over who have taken an orphanage under their wing and are continually sending money. A lot of this money is not even going to

be picked up in the official figures, if you like, because of the manner in which it is getting there. Is there anything else you would like me to expand upon, Senator Reynolds?

Senator REYNOLDS: No, thank you; that was very helpful. In relation to accountabilities, we have had some discussion today from some of those who have given evidence about the role of Australian charities and about doing more due diligence and having more transparency in terms of where the money is going and how it is actually spent. I just wanted to pick up that example from Haiti. So \$70 million is going into orphanages. The US donors, I guess, have no way of knowing how that \$70 million is actually spent.

Ms van Doore: Not at all, no.

Senator REYNOLDS: I do not know the numbers, but if you have, say, 10,000 children in facilities—

Ms van Doore: Thirty thousand in Haiti.

Senator REYNOLDS: they should be getting world's best practice care.

Ms van Doore: Absolutely.

Senator REYNOLDS: But they are not.

Ms van Doore: Absolutely. That same amount could be providing for all of those children to be educated.

CHAIR: I have a question and then we will go back to Senator Reynolds. Just to explain your proposal for legislation to limit or cease the funding of orphanage tourism—and I did ask questions of previous witnesses regarding banning orphanage tourism altogether—how would your proposal for legislation to limit or cease the funding of orphanage tourism work in practice?

Ms van Doore: I think we would be seeking to put some boundaries on how Australians are engaging with orphanages. In the act I would not necessarily limit it to the word 'orphanages'. I would be very nuanced about how I termed it. I would be more looking at phrasing it in terms of causing harm to children or participating in activities where children may be engaged in modern day slavery. It may well be that it could fall under the same section as child labour or something similar—so keep it broad.

I think the main purpose of it would be to provide Australians with some really clear guidance that this is being regulated against so they know that volunteering in orphanages is not a good thing to do. At the moment we celebrate people who do it because we think it is a fantastic thing to do, but we do not realise the harm that is being caused to those children. I think it would have to be fairly nuanced. It could be akin to child labour or child begging and participating in those sorts of activities.

CHAIR: Senator Reynolds, you had a follow-up question.

Senator REYNOLDS: Ms van Doore, would it be fair for me to characterise the situation as you and others have provided evidence of today or is it a bit brutal or unfair if I characterised it as Australians, through supporting and going and visiting these institutions, actually paying for children to be trafficked, exploited and subjected to slavery? Is that too hard a statement?

Ms van Doore: No, I think that is a fair statement. If you had seen what we have seen in these institutions, you would know Australians would be shocked to find that their hard-earned money that they are giving generously of is perpetuating this form of slavery for these children. No-one is giving this money to see children kept in these conditions, and even if your orphanage is a 'good orphanage', even if the children are getting educated and they are receiving attention, the fact of the matter is that the research shows that children raised in institutionalised settings are far worse off than children who are raised in families. I do not know if you have had the statistics this morning but the research shows that one in three will be homeless, one in five will have a criminal record and one in 10 will commit suicide. And we know that those statistics are being lived by children who are exiting residential care.

I do not think that is an unfair characterisation at all. I think this is a really desperate situation and there are up to eight million of these children around the world who really need their families or to be in family-based care. And I think that we need to acknowledge the contribution that we are making to their lives and really carefully consider how we want to see them grow and flourish as a result of the hard-earned money that we are spending there, rather than having them stuck in this situation where they are really just commodities in the orphanage tourism product.

CHAIR: I have got one final question: in terms of not promoting the issue but in terms of raising awareness of the issue of orphanage tourism as well as false orphanages and orphans who were taken from their families and so forth, how have the media been engaged in this issue? Have the media been engaged actively enough to try and publicise this as well as, obviously, leaders in the community including parliamentarians and others? Do you

think there is more that we and the media can do to publicise the issues so that the Australian people are aware of this and do not engage in it to start with?

Ms van Doore: There has been some limited media engagement but, of course, getting a bigger media stage would be excellent for this issue. Senator Reynolds has done a wonderful job in getting media attention for the issue over the past year since she travelled to Cambodia. I think that the media will play a hugely important role in just shifting the consciousness of Australians to recognise the harm that is being caused.

I know ReThink Orphanages has done a fantastic job over the last year also in gathering everyone together and having our advocacy spearheaded on this issue and internationally there is also a movement that is doing so. We are gaining some traction but I think we need far more exposure, and the media can provide that.

I would love to see more parliamentarians getting involved in the issue. It is a really important one. I think it is an engaging one for the Australian public. And I think it is something that we can really be doing something about. We can have an impact in this area. We can really change the way Australians are engaging here and it can be a really fantastic story of how we are protecting children across the world rather than contributing to the harm currently.

CHAIR: Thank you very much for your evidence today. I do not believe there any further questions from members or senators. Thank you for your submission as well and for the time you have taken to give evidence. I also note that you will be given a copy of the transcript of your evidence for review but I would like to thank you very much for your time today.

Ms van Doore: Thank you.

Proceedings suspended from 13:05 to 13:58

CAMPBELL, Dr Emma, Director, Federation of Ethnic Communities Councils of Australia

CAROLAN, Ms Christine, Executive Officer, Australian Catholic Religious Against Trafficking in Humans

MOORE, Ms Heather, National Policy and Advocacy Coordinator, Salvation Army—Freedom Partnership to End Modern Slavery

ZIRNSAK, Dr Mark, Director, Justice and International Mission, Uniting Church in Australia, Synod of Victoria and Tasmania

Evidence from Dr Campbell taken via teleconference—

CHAIR: I welcome representatives from the Freedom Partnership, including Dr Emma Campbell via teleconference. Thank you very much to each of you for coming along as well as for the submission you have given. We greatly appreciate you taking the time and the effort to assist this inquiry. I now invite each of you, or a combination of you, to make a brief opening statement or statements before we proceed to discussions and questions from the subcommittee.

Ms Moore: We will make one statement. Thank you for the opportunity to appear before the subcommittee today. I would like to first acknowledge the traditional owners of the land on which we meet, the Wurundjeri people and pay my respects to their elders past, present and future.

As indicated by our submission, collectively we strongly support an Australian modern slavery act. In fact, we acknowledge there is widespread support for such an act. The question now should not be whether we have a modern slavery act but, rather, what kind of modern slavery act do we want. Where can we improve upon the UK legislation and how can Australia become a leader in preventing modern slavery around the world?

We suggest that a strong Australian act should include at minimum the following elements: one, a mandatory annual public and prescribed reporting requirement for large businesses to disclose what steps they are taking to identify risks of modern slavery in their global supply chains. Two, an effective penalty for failing to produce this annual report. Three, a public, easily accessible repository for company statements. And, four, an independent anti-slavery commissioner to introduce independent oversight of the national anti-slavery framework.

These elements we believe are essential to avoiding a mere tick-the-box exercise by Australian companies. On the statements I would like to highlight two areas where Australia can improve upon the UK approach by ensuring, one, prescribed content for company statements and, secondly, by the enforcement of penalties for failure to report.

Evaluations of UK company statements regarding risks of modern slavery have revealed that thus far the quality of reports is poor. Companies have not followed recommended guidance on content. Companies have record on process rather than the effectiveness of those processes. Details on the structure of their supply chains is limited and there has been a failure to identify and acknowledge risk. This is why it is essential for Australian legislation to clearly mandate and prescribe company reporting requirements.

I understand there has been some concern that prescribing or mandating content may lead to a tick-the-box exercise or stifle creative thought and creative responses. Just to be clear, we are not recommending being overly prescriptive to that end. What we believe is that by requiring companies to report on the structure and the nature of their supply chains both the nature and location of risk and establishing some key performance indicators to evaluate established processes against will produce more substantive statements to therefore allow more substantive analysis.

We would like to table a document today as an example of where a company, I guess, the consequence of not having this mandated content. Does the committee have that?

CHAIR: Yes, I have it.

Ms Moore: Do you want to speak to it briefly?

Dr Zirnsak: This is the statement by Simplot. Simplot obviously have a major subsidiary here in Australia. They are the owner of such well-known brands, among many, of Edgell, Birdseye, John West, Seakist, I&J, Lean Cuisine. This statement is the same statement they have had on their website since 2013. It is compliant with Californian law which allows them to simply disclose, despite the fact they are in very high risk industries such as farming and seafood, they basically state they do not think there is any risk and they proceed to inform publicly that they do not take any steps, therefore, to verify. Now, that said, they do obviously in their supply contracts require suppliers to sign a document saying they comply with local laws and, therefore, comply with not engaging in forced labour, slavery and human trafficking. But there is very little evidence here given this statement has

been up for four years that this company is feeling much pressure from a non-mandated content to actually improve their current situation.

Ms Moore: So just to continue, the UK experience has also shown that without prescribed reporting requirements there is a lack of consistency in reporting and this makes it difficult to effectively evaluate company statements against one another. It essentially defeats the purpose of making the statements public. So statements have to be clear, consistent and comparable to enable civil society and government to effectively monitor company action and to enable consumers to make informed choices.

That said, we cannot rely on consumer behaviour as a substitute for government action to uphold human rights. Similarly, if companies face no penalty for failing to report many companies will simply opt out or present superfluous statements that do not contribute meaningfully to enhancing corporate transparency.

Establishing a public repository for company statements is another way to improve upon the UK legislation to, again, increase the capacity of stakeholders to make educated and informed evaluations of company action.

Finally, we see the role of an independent anti-slavery commissioner as absolutely essential to the effectiveness of an Australian modern slavery act. As the UK commissioner, Kevin Hyland, recently said in his recent visit to Australia his office, his independence, has allowed him to engage business in an unparalleled and very productive and positive way. And additionally, since the office was created, UK has seen a dramatic increase in both victim identification and prosecutions both of which have been recognised by the government as key priorities, as seen by the establishment of a special working group under the national roundtable to look at these very issues.

More specifically, that working group is looking at the disparity between referrals to the AFP and the total number of successful prosecutions of slavery crimes and to the disparity between anecdotal evidence of severe labour exploitation and the number of actually identified cases.

In summary, the establishment of an independent anti-slavery commissioner is, therefore, critical to challenging modern slavery and labour exploitation. Given the positive outcomes in the UK and the opportunity for improving on the UK's model, we urge the subcommittee to recommend the establishment of an independent anti-slavery commissioner in Australia. Thank you and we welcome questions from the subcommittee.

CHAIR: Thank you very much. Are there any further statements? No? All good. Thank you very much for your opening statement. I do note it is good to see recently that our subcommittee's advocacy to the minister on funding for the Australian Catholic Religions Against Trafficking Humans actually came through. So that is good to see for your important work.

Ms Carolan: Thank you.

CHAIR: Just to begin with, I just wanted to start with a question perhaps linking to our former witnesses before lunch on orphanage tourism, which is a bit aside from specifically on the supply chains that you have talked about. But what are your churches or church groups doing to tackle that issue given that there are a lot of church and church-based organisations and individuals within churches who are engaged in visiting and contributing funds towards orphanages in which there is or can be a large amount of human trafficking involved? I would just be interested in your perspective on that.

Dr Zirnsak: I am speaking from the Uniting Church perspective. We work with partnered churches on the ground. Cambodia is not one of the places we work with, but from our part of the church, so from the Synod of Victoria and Tasmania, we actually run a responsible travel program which is open to both church members and non-church members. They have done visits to Cambodia and they alert people to what it means to go and visit places in an ethical way. We very much avoid—and trying not to be derogatory about it—the kind of poverty tourism-type approach. That is definitely not where we are at. It is about that learning how to be a tourist in a way that contributes benefits to the country you are visiting and being sensitive to the cultural needs there.

I can also comment I know that World Vision—because my son went on one of their programs to Cambodia—and they similarly ran that program very well where they basically tell the students going, 'You're here to learn from the locals. You're not here to come and play the role of saviour for those people.' So I was very impressed with the way that enculturated the students to see this as a learning experience for them and to learn about the experience of people living in Cambodia and not come away thinking, 'Oh, well, we're going to have to save the Cambodians.' It was far more of a cultural exchange and a learning that was going on. And I think that is kind of the positive side from the tourism.

Ms Moore: I will have to take that on notice. I could not speak to what the Salvation Army is doing in that space.

Ms Carolan: We can just add a small thought. And we have not done a lot of work on it, but at our national conference in February this year we were encouraged by our Baptist colleagues to avoid the idea of ever visiting orphanages because making the links with small children and then breaking those links. One of our own members who is a Nepali himself here as a student said that he works in counter trafficking in Nepal when he is not a student here. He said that at least half of the children in orphanages have a parent in Nepal but that it is seen as like a better life option for the child to go to an orphanage rather than to be nurtured in their own family. We considered that a huge challenge to us. That is just a small thought.

CHAIR: Thank you. Thanks for that. I was just interested in your perspectives on that as well. Another question perhaps you might be able to answer this, Ms Carolan, what do you see are the gaps in Australia's response to the problem of forced marriage and what role does education play in the prevention and limitation of forced marriage?

Ms Carolan: Thank you for that. We, as you know, have been involved in work in schools on forced marriage, and that is not the main emphasis of our submission, of course. So I will just be very brief. But we are very keen to see schools across Australia offer the opportunity to consider the issue of forced marriage. We have been involved very heavily in a few pilot project schools through the Attorney-General's department funding, and each time people—mostly girls and young women—have come forward and said, 'Actually, this is my story.' So we are very keen to roll that out right across Australia.

We are also particularly keen, once people come forward—and I have had two young people come forward in the past fortnight asking for help—we want to have appropriate support for them. We want unconditional support. We do not want that young person to be asked, 'You can get some support so long as you agree to participate in a criminal justice inquiry.' And we also want coordinated support.

CHAIR: Thank you. And one more addendum: do you believe that forced marriage should be included within the scope of our modern slavery act, just to get your perspective on that one? Because I know a few submissions have come through that said we should limit the definition a bit more. But I would differ with that one personally, but I will be interested in your opinion.

Ms Carolan: Well, the main thrust of our submission and of the act, I guess, is around slavery-free supply chains. And our legislation from 2013 is very good, I think, at naming the problem of forced marriage and subsequent bits of legislation have tightened it up. But it depends on whether or not the new modern slavery act would incorporate all the other elements or not. It is a bit of a—yes.

Ms Moore: If I can just add to that, I think that would require a further consultative process to look at how this legislation might bring about some of these things. The other inquiry, the human traffic inquiry recommended decoupling that support from the criminal justice framework. So I think we need to look at—I think we would need another process to work out how this act might bring about some of that. Because some of it is right, some of it is legislative change we are talking about, but some of it is actually just policy and practice as well as engaging states.

Ms Carolan: And resourcing.

Dr Zirnsak: There is a very strong argument to say that provisions relating to human trafficking for slavery, the fact they are currently in the criminal code is an appropriate place to put them and it shows that these are very serious criminal activities and they are comprehensively and have been continually updated in that. So I think there is a strong argument for maintaining that before any consideration of stripping bits out to move them into a modern slavery act would be seen.

Dr Campbell: If I might just add something from FECCA as well, I think that any moves around forced marriage should be done in consultation with the communities where forced marriage is taking place. Alongside educational programs and so on change will come from inside communities. That kind of consultation and engagement and resourcing of groups inside the communities where forced marriage is an issue is really critical.

Ms Carolan: Yes.

Senator GALLACHER: After some discussions in the United Kingdom, once they enacted their Modern Slavery Act, they, surprisingly to them, discovered instances of modern day slavery in the United Kingdom. I put that on the record in case any of your organisations would like to put forward an example of where we might find some untoward activity within the boundaries of Australia before we go down the supply chain.

Dr Zirnsak: It has been well documented; the Australian Institute of Criminology has done studies looking at this. Clearly, there has been identification in the construction industry, horticulture, agriculture, hospitality and domestic work, in addition to the sex industry itself. There is a labour exploitation working group under the national roundtable on slavery and human trafficking, and this is one of the issues we have been discussing. Part

of that has also been about trying to sort through cases where there may be misclassification between law enforcement agencies. For example, an indicator of forced labour would be where an employer has forced an employee to make payments or to accept lower pay under threat of having their visa cancelled or having them removed. That would normally be an indicator of forced labour. Overwhelmingly, such cases—and you can go through the press releases by the Fair Work Ombudsman—are dealt with as civil violations of the Fair Work Act rather than as potential cases of forced labour under the Criminal Code. So we are trying to identify where the boundaries of those kinds of issues are.

Ms Moore: I remind the subcommittee that there are 20 case studies—20 domestic case studies—in our submission providing examples of what Dr Zirnsak just referred to. I would add that, whilst the Salvation Army recognises there are certainly high risk industries, we often say, 'Whatever you look for, you'll find.' Traffickers, modern-day slave holders, are creative, they are industrious and they are very good at staying one step ahead of the law.

I have seen cases in the United States of a group of orphan boys from, I think, Zimbabwe or Zambia. They were in an orphanage in their country and were approached by a group posing as a benevolent organisation who promised opportunities for education and a new life in the United States. They were ultimately trafficked into becoming a boys' choir; they were held under threat of physical violence and withholding of food if they refused to participate in singing in these concerts. They were forced to sing in multiple concerts a day.

I am not arguing that we are going to see that a lot, but I think it is a really good example of where, if we are only directing resources into a particular area, that is what we will find. I think that is why, with the bulk of prosecutions in Australia, if you just looked at the successful prosecutions, you would think, 'The main issue is in the sex industry.' In fact, if we had been directing as many resources as we have in that industry into horticulture, cleaning or hospitality, I guarantee you would see a lot more male victims and you would see a lot more labour trafficking victims.

CHAIR: The Walk Free Foundation estimates there are about 4,500 people under modern slavery practices within Australia. Would you agree with that estimate or do you think it is higher or lower?

Ms Moore: It is really difficult to know for sure. Frankly, it is the only figure we have right now in Australia. I think Walk Free are working hard to improve their methodology, but it is one of the reasons that we are advocating for a more localised response to this issue. We have provided materials to the Attorney-General's Department on a model in the US that prescribes a localised needs analysis that looks at all sorts of records—migration records, demographics, police reports and talking to the community. If each of you goes back to your own electorate and starts asking questions, you will find that there are definitely indicators, and people might just be looking at it through a different lens, or it might be getting picked up in other legal frameworks. Until we really start looking for this, we will not know for sure how big or small the problem actually is.

Dr Zirnsak: It will be a question of how you define it as well, because, as I just pointed out, if someone is under threat, is it treated simply as a labour exploitation case or do you accept it as a forced labour case? Do you accept it as a slavery case? They are not black-and-white lines. There are clearly black-and-white cases, but there are also zones of grey, as far as our law enforcement agencies are concerned. Depending on which way you decide to define it will determine the numbers you turn up as well.

Senator GALLACHER: Ms Carolan or Dr Campbell, do you have any specifics from your organisations' point of view?

Ms Carolan: I would say absolutely ditto regarding what my colleagues have said.

Senator GALLACHER: Dr Campbell?

Dr Campbell: Yes, the same from us. We included a lot of examples in the submission.

Senator GALLACHER: During the break I had the opportunity to have a discussion with Ms Moore. Are there any other examples of unexpected sources, so to speak—people who should know better, who have been treating people in abysmal circumstances, like embassies? That was certainly a discussion in the United Kingdom where several of the embassies had people who escaped, effectively, and then needed assistance. Is that happening in Australia?

Ms Moore: Absolutely. The Salvation Army safe house has assisted many domestic workers who have escaped from embassies. The main concern there is that all of the onus to escape, all of the onus to get away, is on the victim himself or herself—and there have been male victims in this type of exploitation. Because of the rules around entering diplomatic residences, it is impossible for the AFP to go in. I have had conversations with them myself where they feel really frustrated. It is just the way the Geneva conventions work. We are definitely advocating for stronger protections for domestic workers in particular, as an identified group under the national

action plan. It is difficult for most victims to get out of these situations. It is even more difficult for this group, because there is nothing that requires them, obligates them or enables them to leave the premises once they are on the premises.

Senator GALLACHER: I suppose the challenge is about addressing the underlying core issue, not the immigration visa. At the moment, if someone has been stood over, for want of a better word, in their employment, by having their visa conditions held over them, we need to address that particular issue to allow the core issue to get resolved, rather than having them identified and deported, and some of them lose twice, so to speak.

Ms Carolan: ACRATH, through a group of Catholic sisters, has housed two young women who fled a consulate here in Melbourne. We have heard about it happening a number of times with people. They made it out through a Facebook contact with an off-duty Victorian policeman. But they did not know that they had been trafficked. They did not know the language. The policeman took them to the Asylum Seeker Resource Centre, where they went on a path towards a visa that they were not entirely able to access. So it is a very challenging area. I note that Heather has done a lot of work on this.

Ms Moore: That is a good point to draw out. Once they have got out, in a lot of the cases we have seen, the stars really have to effectively align, because if they do not know where to go, or they do not have any money to get anywhere, they will typically go to a local police station. A lot of evidence given to the human trafficking inquiry by the Joint Committee on Law Enforcement showed that there is a significant need for awareness raising amongst local police, at the state police level. Local area commands do not know about it. And when it comes to a diplomat, all bets are off. Everyone kind of—pardon the expression—freaks out. They think, 'We can't do anything. There is nothing we can do.' In fact there are definitely remedies. So in addition to actually escaping from the situation, there are other significant barriers to accessing what assistance is available.

Senator SINGH: Just to follow up on that, there are remedies, but the diplomats have immunity from prosecution; is that correct?

Ms Moore: It is complicated. There are levels of immunity. Yes, the diplomat, the head of mission and the consular officers tend to have full diplomatic immunity, but there are other staff in the mission that may not enjoy full criminal and civil immunity. That said, it does not mean that there are no other remedies. You can declare a person *persona non grata* or revoke the visa of the diplomat in question.

There are lawyers around the world who are bringing civil suits against diplomats as a way to bring pressure. When that happens, you would be surprised how much pressure there is from the actual country, the sending country, to resolve those matters. Countries like Switzerland exercise really creative ways of trying to get these issues resolved quickly. If there is a complaint made, the Swiss government puts a halt on that sending state from bringing any further workers in until that matter is resolved. As you can imagine, the diplomat will have exceptional resources to fight any legal case. The worker is typically represented by someone like the Salvos Legal Humanitarian, that does not have infinite resources. We have definitely seen diplomatic cases; in fact there was an American diplomat that had retired in Melbourne and we got a successful settlement out of her. An American diplomat trafficked an African woman to Japan, but it all happened through coordination between Australia and the US. So there are definitely things that we can do to improve the outcomes for these workers. If nothing else, we need to get them onto the trafficking framework and do what we can to get their wages back.

Senator SINGH: I would like to explore this issue of not really knowing the size of the problem in Australia and the kind of inherent fear that a lot of people that are being trafficked or living in slavery, or slavery-like conditions, feel, in coming forward, because of the potential revoking of their visa. I understand that there is a particular visa category, the human trafficking visa category, although it does not seem to be used that often, or at least it is a slow process. The immigration minister has power to revoke certain visas. The idea of victims coming forward, knowing that that may lead to them being deported, is a real, live issue. How can this committee and the work that we do by implementing a modern slavery act address some of those issues?

Dr Zirnsak: On a positive note, we have seen some positive moves in this space. There is a memorandum of understanding now between the Fair Work Ombudsman and the Department of Immigration and Border Protection so that if there is an allegation of worker exploitation there will be consideration not to move to removal. That is a significant step forward. One of the things we faced before as a challenge was that you only got the potential of non-removal if you could show that it was a forced labour or a human trafficking case. To broaden it out to labour exploitation will create more safety.

What we are still tending to find in the community and with community groups that detect cases that might be forced labour, human trafficking, is that there is still fear that it does not appear to be a guarantee. So there is still a lot of fear that the department of immigration's default position will be removal. Certainly, their own publicity

does not help that. When you raid a farm and you say, 'We've rounded up 40 unlawful non-citizens and immediately removed them,' despite the fact that there was probably evidence that it was a forced labour situation, it is not going to create confidence about reporting, because it appears in that case particularly that the employer gets off.

There is a difference, obviously, between workers who have work rights and those who are working illegally because they have no work rights. I understand why the government would need to treat those two situations differently. But certainly, in cases where people have work rights and there is an allegation of worker exploitation, if you really want to address this, the default position from the department should be non-removal until it has been completely established that there was no worker exploitation. That would create confidence both in organisations to detect and amongst the workforce, the workers themselves, that it is safe to come forward and report the situation and not find yourself removed with no impact on the employer.

It would be worth the committee following up the data from the Department of Immigration and Border Protection to see how many enforcement actions they have taken against employers for breach of the employment conditions of the Migration Act.

Ms Moore: We need to look at the notion that simply wanting a visa draws into question your credibility as a potential victim. The promise of a visa is most commonly used to draw someone into this kind of situation. The impacts of Australia's migration policy on its anti-trafficking framework have not been duly considered. I understand that the department is coming before the committee next week. What we are finding difficult is that the exercises of compliance operations are not consistent with international best practice. International best practice holds that, as Mark just said, 'where there are indicators of trafficking or slavery'—so not conclusive evidence, which takes quite a bit of time because the victims have been often coached or, frankly, terrorised into not talking. You cannot simply rely on one interaction with a person, and you certainly cannot rely on an interaction that takes place in an immigration detention centre. That is not the way to build trust with someone who has been told, 'No-one will believe you. I am a citizen; you are a migrant. You're temporary. You're in a low caste. No-one will listen to you. Everyone is going to believe me'. Because we continue to remove people in this way we are essentially fulfilling the threats of the trafficker. Sorry, I lost my train of thought. I will come back to it if I think of it.

Dr Zirnsak: Can I back up a couple of things Heather mentioned. The Fair Work Ombudsman report looked at the working holiday visas and found that, even though people have the ability to walk away from their employer, if you have been on a farm for 80 days and then your employer says, 'Unless you have sex with me, I won't sign off on your second visa', they have been able to coerce women into sexual exploitation on that basis alone. That is the pressure just from the visa conditions in that case. That is documented. As I said, you can interrogate the Fair Work Ombudsman on that particular case.

Senator SINGH: That leads to my next question. At the moment we do not have an anti-slavery commissioner. As you say, it is fairly random what victims do—go to a local police station, to someone on Facebook, nothing—what have you. Would this anti-slavery commissioner be a kind of conduit for all of that, a first port-of-call for the police if they went there, or at least a hotline or something for the victim to be able to refer to support organisations to start that process of removal from their slavery conditions? Do you see an anti-slavery commissioner working with victims in that way?

Ms Moore: Yes, provided the role is adequately resourced and the person has the appropriate expertise.

Dr Zirnsak: I would probably take the view that the commissioner, as we have seen with Kevin Hyland, can help coordinate between the different parts of government, the different law enforcement agencies, and ideally with some of the community groups. Heather has been involved both in the US and—I'll let her speak for herself—here in Australia, in Western Australia, setting up community government working groups to effectively address women trafficking.

Ms Moore: Do you want me to expand on that, or go back to the anti-slavery commissioner?

Dr Zirnsak: The commissioner could facilitate that kind of process.

Ms Moore: We have recommended an anti-slavery commissioner at the federal level, as Mark said, to bring together the different groups. The Attorney-General's Department is doing a fine job, but they are a government department. They cannot be independent. We have recommended bringing in this role to coordinate and to provide that independent voice to government, which Kevin Hyland spoke extensively about when he was here, but then appointing a state coordinator to effectively link in with that commissioner so that there are some eyes on the ground that can capture local trends and what not.

Under the model Mark is talking about is a group we have developed in WA. We have local government, state government departments, Commonwealth government and a handful of civil society—because we do not want the group to become unmanageably large. It is essentially setting up a structure through which to drive sustained activity. We see now lots of good things happening, but it is generally a one-off. We will see a round of training going off. There is the AFP investigators course once a year. They are looking to expand it, but it is once a year. According to the last annual report by the IDC, fewer than 50 state police officers have attended that training in 12 years. We need to look at sustained activities where people are getting access to ongoing training, ongoing professional development.

A key area we are missing in Australia is engagement with the health industry, emergency departments, GPs, child examination teams. There is literature now that supports the health services industry as a key point of intervention. I had a client in the US who reported to an ER; the trafficker was allowed to interpret for her. She spent another year in the situation. These kinds of local frameworks enable us to bring in a breadth of people. The roundtable is necessary and the roundtable is doing some excellent work, but it is not a substitute for local action that engages a far greater breadth of stakeholders who are in a good position to, if nothing else, just identify and refer. Until we start doing this we are not going to get a true sense of how big or small the problem is.

Dr Zirnsak: For a lot of the people who are essential targets for human trafficking, forced labour, giving them literature about who to phone does not work for them. There needs to be that building up of a relationship. A direct contact, at least a verbal contact, with a group that can assist them would be a much better way. Seeing the commissioner's role in that way probably is not that helpful. It needs to be more decentralised. A group verbally contacting them tends to be the better way.

That goes to the point that was made before: with some of the trade unions which have done work and found people in what looked like forced labour situations, it can take them a year or more to build trust and a relationship with those workers to get them to reveal what's going on, to get them comfortable and feeling safe enough to talk about what's happening. An essential part of the commissioner's role, going back to the supply chain work, is having a body that will encourage business and get business to follow through on their reporting requirements. You will need an enforcement agency that is obviously going to make that work.

Senator SINGH: Do you see the prescribed content of company statements process, the repository that comes from that, sitting with the commissioner in the commission? I remember the UK commissioner talking about this. Obviously, they don't have a central repository in the UK in its legislation. It is done by an NGO—

CHAIR: It is done by the Business and Human Rights Resource Centre.

Senator SINGH: Do you see this commissioner having that central repository there?

Dr Zirnsak: We have had discussions about this. There are probably options around it. That would be one option we have discussed. Would it be better at ASIC? Might it be parked somewhere else? Essentially, whoever you end up parking it with needs to be invested in making sure it happens. If you give it to a law enforcement body that regards this as a very low priority in all the things they need to do, and if they are not given adequate resources to do it, then you can pretty much count on companies learning pretty quickly that they will not have to report and there will not be any consequence for not doing so.

Senator REYNOLDS: Thank you for your written evidence and your testimony here, and for the work you do in this area. I would like to come back to the issue of supply chain transparency and reporting. From what we have heard here and in the UK, my concern, in terms of our own report for the committee, is that we do not end up with another tick-box activity, which you were talking about. It just becomes something that companies can outsource to a third party: 'Yes, we have had someone do due diligence for us and we think we're fine', or tick a hundred boxes and it becomes a perfunctory thing at the board level. To avoid that situation, personally I am in favour of finding and recommending a way that we can get them to report but also force them to engage, which is why I like the non-prescriptive nature of how they do the report. While some of them are not as good as they could be yet, it forces them to think at the board. Do you agree with that general approach, or do you think it is fraught with danger?

Dr Zirnsak: The evidence in the UK is that the current UK regime has people engaging in tick-box exercises. You will find from the analysis that is already there that companies are going to third-party firms—presumably large accounting firms; there would be plenty here—and simply saying 'Fill this out for us'. I know this from the church side. When we are doing some of our ethical stuff with some of our suppliers we will go to a third-party accountancy firm and they will draw up a fairly standard document for how that agreement might work around ethics. If we want further investigation to take it a lot more seriously, we have to invest our own resources and dig

around. To a degree, a lot of this stuff is more about how you do it and how serious you are about ensuring your ethics are complied with than what you do.

A company can spend an awful lot of money on auditing, but if they do the auditing in one way they will not find anything. They could spend less. But if they do it by a different technique they will determine it. You can pay a very expensive accounting firm to do an announced audit, and I can pretty much guarantee that they are not going to find an awful lot. If, on the cheap, you get someone to go and talk to workers away from the factory—this is stuff we have done—you will get the workers giving you an honest appraisal of the things that are going on in the factory and things they are seeing and situations they are being subjected to. That is a lot cheaper than the audit through the expensive firm. It is not about cost. It is about technique and measures.

Senator REYNOLDS: So if your observation is that the UK system, despite being designed not to encourage tick-boxing is already doing that, what can we learn from that and how can we improve the system? What would your advice be here? How do we encourage that engagement, rather than ticking boxes?

Dr Zirnsak: In your initial stage you would specify some content that they have to sign off against. They might still engage in the tick-box. But, if down the track in a five-year review, you find that a certain industry is just not treating this seriously, that there are serious allegations of forced labour and human trafficking in that industry, in those supply chains, and you are not seeing improvement, then the government of the day might think about tougher measures. To the credit of the parliament, across parties, we currently have the Illegal Logging Prohibition Act. John Howard got the research done, which showed that about 11 per cent of timber imports into Australia are illegally sourced, causing huge damage in the countries they are sourced from—tax evasion, bribery. There are even murders that go on to facilitate that. We now have a requirement that certain companies have to do due diligence to ensure they are legally sourcing their timber. That was in response to identifying a serious problem that the industry at that time was not taking seriously.

Senator REYNOLDS: In line with that, is there a way of taking a more risk-based approach to it—for example, giving companies examples of what good practice looks like, and assuming that most companies want to do the right thing instead of thinking they are all going to try to get around the system? If a company is thinking, 'What do we have to do to meet that?' might that sort of an approach be beneficial?

Dr Zirnsak: Absolutely. Again, the Illegal Logging Prohibition Act is an example of where that has happened. If you look at Australia's anti-money-laundering laws, AUSTRAC provides lots of advice to reporting entities about what good anti-money laundering—

Senator REYNOLDS: I think Ms Carolan wants to—

Ms Carolan: No; Mark agreed to speak on that particular point. I was just nodding to say I agree.

Senator REYNOLDS: Okay.

Ms Carolan: Mark has got a real background in that.

Senator REYNOLDS: I am getting the wind-up from the chair so my final question is this: is there a way that we could also share our information so that—for example, when companies do not know where to start—we know what high-risk countries are, we know where high-risk industries are and quite often, from what other companies have found out, we know there are not only high-risk industries but also high-risk factories? So would allowing companies to do that, particularly smaller companies who do not have the resources, be something that we could use globally to information share, at least in that risk, because you are not going to be able to check them all. If you have a thousand companies in your supply chain you cannot check them all.

Dr Zirnsak: You already have them. The Attorney-General's Department has already done a risk analysis of goods and places they are coming from. That was done as part of the Supply Chains Working Group work that we have under the national roundtable on slavery and human trafficking. The other models that are out there—and you can actually draw straight from them—that could supplement them include the US Department of Labor, which produces an annual report on forced labour and child labour and risks within products coming into the US. It identifies goods and countries they are coming from where those risks exist.

Senator REYNOLDS: But the issue for a lot of companies that are entering this for the first time is that they are not going to know about that.

Dr Zirnsak: No; you are right. That would be the advantage of having an independent anti-slavery commissioner whose job would be to go and help companies understand where they are likely to see risks: if you are importing this type of good from this country, you need to realise this is high risk and you need to pay greater attention to that.

Senator REYNOLDS: For example, even if I do not fall under the threshold and I do not have a reporting requirement, I want to start manufacturing T-shirts to market here in Australia. I know that if I am looking, for example, in India—a garment factory in a particular region—then that is high risk and I have got some advice about how to enter into contracts or what to look out for. Is that the sort of thing? Again, we need to get that information out beyond bureaucrats.

Dr Zirnsak: Absolutely.

Ms Moore: The Walk Free Foundation has published a guide for business on how to do that kind of thing. The point around information sharing, having an independent anti-slavery commissioner could in a way provide that national contact point to facilitate greater information sharing between us and other countries as well.

Ms Carolan: We are working with two large Catholic organisations to look at procurement and slavery in their own workplace. We have used that toolkit from Walk Free. It has got very clear steps. We were thinking that to add to that toolkit as a resource we actually need to offer some training for procurement officers so they can act. I think there are people who want to do the right thing but need that support.

Senator REYNOLDS: So it is marked 'procurements' on DFAT or on Austrade or something: 'If you are thinking about procuring overseas, here is where you go'?

Ms Carolan: Yes.

Senator REYNOLDS: Thank you.

CHAIR: Unfortunately, we are about 20 minutes over time so I will have to wrap up, although we did start late. I thank you very much for your evidence, as well as your very comprehensive submission, which will greatly help our inquiry. I wish you all the best doing the work that you are doing. I note that you will be given a copy of the transcript of your evidence for review.

BURTON, Dr Mark Gregory, Board Member, Slavery Links Australia Inc.

RIPPER, Mr Geoffrey Harold, Member, Slavery Links Australia Inc.

[14:50]

CHAIR: Before we commence taking evidence I ask whether it is the wish of the committee that document presented by the Freedom Partnership, which is a Simplot transparency and supply chain statement, be accepted as evidence. There being no objection it is so ordered. I also ask whether it is the wish of the committee that the document presented by Slavery Links Australia entitled 'The hierarchy of slavery offences in the Commonwealth Criminal Code' be accepted evidence. There being no objection, it is so ordered.

I now welcome representatives from Slavery Links Australia. Thank you very much for your time in giving evidence today, and also thank you for your submission to our inquiry. I note we have commenced about 20 minutes late for your evidence, so we are happy to go at least that amount of time over should we need to do so. I now invite each of you, or one of you, to give a statement or statements to the subcommittee. That will be followed by discussion and questions from senators and members.

Mr Ripper: It has been determined that I shall speak first, sir, and I request that I may be permitted to read my statement for speed of delivery and possibly clarity as well.

CHAIR: That is fine.

Mr Ripper: Thank you, sir. The definition of 'slavery' in section 270.1 of the Commonwealth Criminal Code and the offences created by section 270.3(1)(a) have been established as being within the legislative power of the Commonwealth pursuant to section 51(xxix) of the Commonwealth Constitution, because these provisions appropriately gave effect to Australia's obligations under the international convention to suppress the slave trade of 1926 and the supplementary convention of 1956.

I refer to the unanimous decision of the High Court of Australia in *The Queen v Wei Tang* (2008) HCA 39, this being a decision of the High Court sitting as a bench of seven justices. It is very unusual for the High Court to step into a bench of seven. In the same case the High Court decided, with Justice Kirby dissenting, that in a prosecution under section 270.3(1)(a) it was not necessary for the prosecution to prove that the accused knew or believed that the nature of the powers Ms Wei Tang was exercising over the women who had come to Australia voluntarily on visas obtained illegally to work as prostitutes—that the powers she was exercising were powers attaching to the right of ownership, or that she was dealing with the women as mere property.

In this respect the High Court reversed the earlier decision of the Court of Criminal Appeal of the Supreme Court of Victoria. In the same case the Court of Appeal had quashed the convictions of Ms Wei Tang as had earlier been recorded by the County Court of Victoria. In the result, the convictions were restored by the High Court and the case was referred back to the Victorian Court of Criminal Appeal for it to deal with the sole remaining matter, being the appeal by Ms Wei Tang in relation to the severity of the sentences that had been imposed upon her by the County Court.

The complexity and difficulty in this second matter is evidenced by the different thinking of the 10 judges involved in the Wei Tang case. There were three Court of Criminal Appeal judges, plus Justice Kirby, who ruled on one particular interpretation of what the legislation required the prosecution to prove. The other six justices of the High Court unanimously ruled that the prosecution did not have to prove what the other four judges ruled was, in their opinion, essential for the prosecution to prove.

Thereby one might conclude that the law in this area is now appropriately and fully established in Australia. And it might follow from this line of thinking that thereby there might be no need or reason for Australia to proceed to introduce further legislation in the form of a modern slavery act, the same as or with adaptations to the current legislation in the United Kingdom. However, Slavery Links believes and submits that there remains room for improvements to be made to the current Australian legislation and case law. The areas for improvement are detailed in its submission, in sections 2 and 5, and also in section 3 regarding parliamentary scrutiny for the matter of slavery.

Slavery Links agrees with the matters recommended to the subcommittee by Ms Gallagher of Doughty Street Chambers, London, in submission No. 160. It also agrees with the matter recommended to the subcommittee by Mr Laurie Ferguson in his letter dated 22 June 2017. This letter focuses on the need for the subject of slavery to be added to the matters which are required to be considered and processed by the parliamentary scrutiny process.

There is one matter not covered in the submission to the subcommittee by Slavery Links which I wish to draw to your attention. You will be aware that the five female contracted sex workers in the Wei Tang prosecution were speedily returned or deported back to their country of origin—namely, Thailand. At the time of the deportation

three of them had not earned enough money in Australia to repay and discharge the debts of \$40,000 to \$45,000 which they owed to those who had arranged and financed their travel to and work in Australia. Thus these women were returned to Thailand with the obligation to repay the balance of those debts there, in Thailand, by the earnings they were able to achieve in Thailand.

Their work in Australia earned them Australian rates of remuneration of \$50 for each customer serviced by them. Under these conditions they were able to earn enough in Australia to repay the entirety of their debts to their financiers by working in Australia for six months. But, on deportation to Thailand, their earnings there were a fraction of their earnings in Australia for performing the same services. Consider, for example, that in Thailand they earned \$1 for each customer serviced rather than the \$50 earned in Australia. Consider then that, in order to repay their debts in Thailand, they needed to service 50 more customers in Thailand than in Australia. This means that the period in which they needed to work in Thailand in order to repay their debts would be 50 times longer than the period required if they had remained working in Australia.

The period of work required in Australia, as I have mentioned, to repay the debts was six months. Therefore the period of work required of them in Thailand, after their return there, will be 50 times six months, that is, 300 months. That is 25 years. Thus the women who voluntarily entered into slavery-like conditions in Australia, on their deportation back to Thailand, were compelled to enter into slavery-like conditions of forced labour there for an extraordinarily long period of up to 25 years in order to discharge the debts they and their families owed to the financiers.

One might consider that, whilst the prosecution of Ms Wei Tang in Australia for slavery was successful, as it was, one of its direct consequences however is that the women involved in Ms Wei Tang's scheme in Australia were, upon deportation to Thailand, subjected to an enormously long period of what is in effect a continuation of the slavery-like conditions they had entered into in Australia. The bottom line is that the prosecution of Ms Wei Tang in Australia, which drew upon enormous resources of skill and expertise and enormous quantities of money—I would estimate that at least \$5 million to \$10 million was spent—was very successful. In other words, they really kicked a goal with that prosecution.

However, the result on the victims, the ladies from Thailand, was not a goal, was it? It was in fact an out of bounds on the full. Something needs to be done about that. That is referred to quite frequently in quite a number of the submissions which have been made to you.

CHAIR: Dr Burton, do you have any supplementary brief opening statement?

Dr Burton: Yes, if I may. Slavery Links seeks to identify some matters that remain from the previous joint standing committee inquiry held in 2012-13. They are found in paragraphs 53-72 of our submission, if I may refer you to that, perhaps not for discussion now but perhaps later in this inquiry.

By way of reminder, we obviously retained division 270 of the Criminal Code, given that that is the jurisprudential basis for the definition of 'slavery' in this country. We locate the crime of debt bondage within division 270 of the code, rather than division 271 where it currently sits. As Mr Ripper has already indicated, the supplementary convention of 1956 should be brought within the ambit of the Human Rights (Parliamentary Scrutiny) Act, it should be added there to our list of treaties, and the implementation of standard nomenclature should be brought forward so that 'slavery' is consistently defined throughout Australian legislation and in public conversation.

I have given to you, members of the committee, yours to keep, your very own A3 copy of our little chart on the hierarchy of forcing as it arises.

Senator REYNOLDS: It is very effective; thank you.

Dr Burton: Thank you. I am much given to visual aid myself, I must say. You will notice that debt bondage sits at the lower end of the scale and that the X axis here gives you the maximum terms of imprisonment. The level 1 imprisonment for somebody found guilty of making a slave or keeping a slave, the 25 years imprisonment, is a very serious offence. As Justice Kirby pointed out in *The Queen v Wei Tang*, it was one of the heaviest penalties in Australian legislation currently available.

Debt bondage sits outside that particular hierarchy, as you know, in 271 of the code along with trafficking, because perception is not necessarily everything but it certainly prejudices outcomes. My little informal survey leads me to believe that people associate debt bondage with trafficking because they are gathered together under that head in division 271 of the code. We would submit that that would make a significant impression with regard to education and, indeed, prosecution of slavery and slavery-like offences. It would also bring us into alignment, by the way, with the Crimes Act 1961 in New Zealand. In section 98 'debt bondage' is clustered together with 'slavery' and 'slavery-like' offences there in terms of our part of the world.

We also submit that education—a theme that will run through many submissions, I would suggest—about slavery is essential. In paragraph 53 and following in our submission we raise that particular point, hence the reference to the Human Rights (Parliamentary Scrutiny) Act and the inclusion of the 1956 supplementary convention. The strength of the convention is that not only is it an international instrument but that it worked very creatively. It added to the 1926 convention on the abolition of slavery and was trying to keep one step ahead of the human proclivity to have an evil imagination.

Slavery as a crime is clearly a significant part of our focus. While we respect that many of the submissions that the committee has received are heavily reliant on the marketplace to control this problem—and that will always be part of an answer of course—the primary consideration is that under international law this is a crime. We cannot derogate from our responsibility here. Merely to push it off into the area of economic control is to miss a very significant point.

I suggest that that draws together the major themes of our submission. We would be happy to take any questions you may have.

CHAIR: Thank you very much for your opening statements. I will start with an initial question and then pass to other senators and members who may have questions. I would ask that each member and senator keep the number to about two questions each, and then if we have further time we can return to some further questions after that.

My first question is: can you discuss further your suggestion around the Australian government changing the terminology around slavery to 'slavery, slavery-like conditions and people trafficking', particularly in light of the fact that your submission suggests a number of adjustments to existing legislation in addition to the modern slavery act which is proposed, particularly around definitions and the terms and locations of them; for example, what you have just said regarding moving debt bondage from section 271 to section 270? Can you give a bit of an expansion upon your reasoning there?

Dr Burton: I suppose our submission is urging consistency—clearly nothing more—so that with a piece of legislation, or indeed in public pronouncements, the language is consistent and easily defined and the definitions are easily and readily available. One of the things clearly to avoid, which was alluded to—it was not alluded to, it was stated very clearly in the Wei Tang judgment by both Chief Justice Gleeson and Justice Kirby—was the danger of trivialising or banalising the notion of slavery by bringing everything in underneath it, such that it becomes a meaningless or indeed a tame concept rather than a truly abhorrent, internationally recognised point of criminal law.

It is really not to add new nomenclature but really to standardise it so that wherever you went, in terms of Australian legislation, if we had an anti-slavery commissioner, as was well ventilated with your last panel, indeed these things are consistent across the board and not open to individual frolics or little adventures in interpretation.

Senator GALLACHER: Given that we have got this Commonwealth Criminal Code and these offences, why do we need the modern slavery act?

Dr Burton: We could in fact do what we do with taxation law and just have the Taxation Act 1936, which sets out the whole notion of taxation, and then subsequent legislation merely borrows from that. So you are not re-inventing anything. If a contemporary slavery act was brought before the Australian parliament and passed into law, apart from giving it significant profile and a significant opportunity to educate lawyers, for a start, public prosecutors, police—this is the experience in the 2016 review in the United Kingdom by the Home Secretary of their modern slavery act—is that its educational value, because of its stand-alone nature, is spectacular. It really does highlight the point that this is a problem. It is ongoing. It has not gone away, it is not likely to and it has to be seriously addressed. It would not require new definitions. It is generally regarded—in fact Professor Jean Allain, who is a visiting professor currently at Monash University—

Senator GALLACHER: He gave evidence yesterday.

Dr Burton: He commended the High Court, the Full Bench, in Wei Tang for the best definitional expansion in terms of international criminal law on slavery.

I suggest a modern slavery act would have immense value in addressing the problem. Currently it appears to be hidden away within the Criminal Code, which for many people, many lawyers included, is a labyrinthian document, not as labyrinthian as some, but it would bring it right to the fore.

Senator GALLACHER: We sit through hours and hours of hearings and sometimes there is a point in the hearing when the penny drops. That was a great answer. Thank you.

Senator REYNOLDS: I fully concur with the deputy chair. That was a very cogent explanation; thank you. On that, would you agree that what you have recommended, that 'bondage' under 271.8 be moved into 270, should all come out and into the new modern slavery act, like they have done in the UK? They have actually consolidated all relevant legislation, again for simplicity and for ease of communicating to police and people in the social justice system, the DPPs, et cetera. What are your thoughts?

Mr Ripper: My thoughts are very clear. The answer is no. The reason is that the provisions in the Criminal Code dealing with slavery offences have been very carefully worked out and are clear and understandable and have now been fully investigated and ruled on by the High Court. There is absolute certainty there now. There is no need to change or diminish that degree of certainty.

As Dr Burton pointed out, the Criminal Code is not a place to put in provisions for there to be a commissioner or for there to be requirements that commercial establishments are to file annual statements and the like. Those sorts of very desirable legislative measures do not have any place at all in the Criminal Code. They have a place in a different piece of legislation. I think the Criminal Code should be left as it stands. There is a need for there to be additional legislation, quite apart from the Criminal Code, dealing with these other very desirable matters. That is my answer.

Senator REYNOLDS: That makes sense. In terms of the practicalities of implementing this process, we had a lot of input and feedback about the UK system that a lot of the challenges were that, even when they had laws in place and law enforcement, there was not continuity between community agencies and local councils—"What does this actually look like?"—to recognise what these offences look like, whom to refer them to, how the police investigate and how they are prosecuted and dealt with afterwards. I am just wondering: in a practical sense how would you recommend we look at making recommendations in this area—how to actually do that process?

Mr Ripper: I am a lawyer. That is not my area of expertise. But it strikes me that it is not part of the legal system at all. It is part of a system set up by the bureaucracy, which would have to be headed by the commissioner. The commissioner is the keystone and the success in that area, backed up by proper legislation. The forcefulness of what the commissioner can do in respect of the other bodies that you mentioned is the secret for success in that area.

Senator REYNOLDS: You are seeing it as almost a conductor or a ringmaster bringing all the other people together and looking at this as a whole and dealing with it as a single process?

Mr Ripper: Yes.

Dr Burton: Indeed the review of the Modern Slavery Act last year by the Home Secretary of the United Kingdom, as you are no doubt aware, recognised this as one of the particular problems. One of the comments that I note from their report is that it is apparent that investigators and prosecutors often find it hard to distinguish between victim and perpetrator. That is a fairly fundamental level at which the problem exists. Of the 29 recommendations that the Home Secretary received out of that review, a goodly percentage of those turned on this whole question of education. Without wanting to make the as yet non-existent anti-slavery commissioner into a person who presides over a giant, monstrous department, it would seem that those sorts of responsibilities would clearly have to come within that sort of bailiwick to address these questions. There is enough confusion as it stands now, from my private conversations with some crown prosecutors, with regard to these sorts of offences. As was noted in the last panel discussion, the area becomes grey and grainy, and it is difficult to distinguish. So education is very much to the fore in terms of the MSA review.

Senator REYNOLDS: Having a look at the offences here, and looking at it as a non-lawyer, you have to have a really detailed level of knowledge to actually work out what is the difference between 'debt bondage' and 'servitude' or 'forced labour offences' versus 'debt bondage', because when you look at some of the descriptions they do blend into each other a little bit, but obviously the penalties are stepped up. In terms of the descriptions as they currently stand in the legislation—notwithstanding that there is already some substantial case law around this—do you think that, if you were writing it from scratch, you would change how these crimes are described and the relative penalties between them?

Mr Ripper: Dealing with the first question, the answer is no.

Senator REYNOLDS: Is there case law? Is it because there is case law already?

Mr Ripper: A bit of both. The provisions in the Criminal Code that we are talking about are so well worked out, designed and clear now, with the benefit of the High Court's judgements, that we are better to leave them as they stand and not to change them at all. It will all work. The only reason why it will not work is that the prosecution under those sections, as we saw in the Wei Tang case, is simply so expensive. Millions of dollars have to be spent on the prosecutions.

The Wei Tang case went through two trials in the County Court of Victoria. The first trial went on for four to five weeks, before a jury. The jury were unable to reach a verdict; therefore the case ended. Wei Tang was presented again for a second time in the County Court, again for four or five weeks. That second jury was able to reach verdicts on all 10 charges, and, as a result of that, Wei Tang was sentenced to 10 years of imprisonment. Wei Tang then sought to appeal against the convictions, and she did that by seeking leave from the court of criminal appeal of Victoria. That would have taken two or three days. She was granted leave to appeal. She then came before three judges in the court of criminal appeal in Victoria. That would have taken three or four more days, plus 60 or 70 pages of judgements.

Senator REYNOLDS: Goodness me.

Mr Ripper: Then, of course, the Commonwealth was not satisfied with the decision of the eminent justices in the Victorian court of criminal appeal and they then took it to the High Court, firstly, to establish the jurisdictional question about the Constitution, and, secondly, to dispute the interpretation placed on the Criminal Code by the Victorian judges. The High Court had 70 or 80 pages of judgements. The court of criminal appeal had 60. We are into three months of trial at this stage. We are going to the most senior judges in the country. We are very lucky that it went to the High Court.

Senator REYNOLDS: That does not sound like a very effective system.

Mr Ripper: It has settled down now, and it should work now. My belief is that it will work now, but the resources which the Commonwealth—using the state services, mind you, because that is how it works—has to put into the prosecutions demand really skilled lawyers, really skilled barristers, for days and days on end, and the appeal processes are going to be used all the time. Just where Ms Wei Tang got millions of dollars of funds to continue appealing—I do not know where that money came from. It is a really difficult area.

Dr Burton: We are very well served in section 270.1, where the definition of slavery is found. And, yes, for the most part, without alteration, the definition from the 1926 slavery convention is lifted and placed in there. The genius of it is the addition of the final words. It refers to the powers attaching to the right of ownership being exercised over somebody—and this is where the new words come in—'including where such a condition results from a debt or contract made by the person'. That removes an immense amount of doubt here, because you cannot contract to have a crime committed against yourself. So that provides great clarity. That is a stroke of drafting genius, for my money. It does not look terribly exciting, but it is three cheers all round. It is very good.

CHAIR: Does any other member or senator have a question?

Senator REYNOLDS: No. I think it has been very helpful.

CHAIR: We have concluded our questions. I would like to thank you very much for your evidence today, as well as for your submission, which does clarify a few points and gives some insight that many other submissions have not on a few different particular areas, particularly around sections 270 and 271, which is very helpful for our inquiry. So thank you once again. A copy of the transcript will be sent to you, and you will be given an opportunity to review your evidence.

MAKSIMOVIC, Ms Andrea, Associate Director, International and Civil Society, Australian Council of Trade Unions

[15:23]

CHAIR: I now welcome Ms Andrea Maksimovic, from the Australian Council of Trade Unions. Thank you very much for appearing before us today, as well as for your submission. I invite you to make a brief opening statement before we proceed to discussion and questions from members and senators of the subcommittee.

Ms Maksimovic: First of all, I have to warn you that I only arrived from Europe last night, so if I seem to be not quite here, you will have to forgive me. I would like to thank the subcommittee for the opportunity to discuss with you the ACTU's views on the possibility of introducing a modern slavery act into Australian law. I will not quote any figures to you because I am sure you have read the reports and you understand what brought us here. I will also not discuss sex trafficking, as this is not one of our areas of work. However, we of course would like to see this issue dealt with appropriately.

The ACTU and its affiliate trade unions have been calling for changes to laws on the questions of labour exploitation, debt and bondage—all factors involved in slavery-like practices—for a long time. As a movement built on international solidarity, we have known that this has been happening in the world for a long time.

At first the fact that these practices were occurring in Australia was considered to be simply a question of a few rotten apples in the barrel, and unions raising concerns were considered to be racist. A decade later, we know for a fact that these abuses of workers' rights are in fact systematic and that unions have been at the centre of helping these workers to access justice and be treated equally. So I have to say that we are very excited that there is this inquiry, because we feel that the world, in Australia, has come to understand what is happening. We think this is a great opportunity to change the rules to make sure that the system works in favour of workers here and internationally.

Changing the rules of our system needs to start with greater transparency, and this is what we have discussed in our submission. There is widespread support for this position. Having looked at some of the submissions, we can say that this has now become a question that, together with the business community, we can pursue. But we need to make sure that transparency is not an end in itself, or a way for some companies to give themselves a pat on the back, but a useful, practical tool that we can all use to create incentives and hold accountable those who enable it.

We believe there are key components to ensuring transparency links to improvements in workers' rights and human rights generally. These are penalties for companies not disclosing the right information or no information at all; templates for companies to report on a non-exhaustive list of company information to ensure that we are not comparing apples with pears; a public central registry, which will clearly show who is doing what, and which allows civil society and trade unions, as well as consumers, to see what is happening; ensuring that the legislation applies domestically and overseas; and requiring public procurement contracts to include social clauses, including in respect of human rights.

These are the basics that will help to get the information that we need. But this can only be the beginning. Greater transparency needs to be combined with a range of other changes. We have to note that having a modern slavery act would really galvanise governments, business and civil society to demand change, to amend laws and to prosecute those involved with abuses. But there are other pieces of the puzzle that need to address labour exploitation within broader labour standards and business regulation frames. A little bit of this has been discussed in the last two sessions, about where you draw the line and what that means.

We must ensure that looking at severe forms of labour exploitation are just like questions of criminal law, where we are not prevented from looking at them as a systemic issue within business models in certain sectors. The key to dealing with labour exploitation across the spectrum is strong labour rights, such as freedom of association and the right to collectively bargain, as well as decent working standards and wages.

We believe that Australia can be a leader in ensuring that international labour standards are upheld. The Australian government co-sponsored the UN resolution endorsing the UN guiding principles, which contained these and other human rights, and now the government is looking at creating a national action plan, which we are also very excited about. A part of this is ensuring that companies do due diligence to ensure that human rights are protected and victims of abuse have a right to remedy, not only in their own operations but throughout their supply chains. This can also help companies to defend themselves against liability and ensure that governments and consumers have a watchful eye on their supply chains.

This should also mean that instead of relying on things like audits they can rely on sharing information with workers and training them about their rights. In turn, this will help with preventing abuses. In hiring situations, there ought to be a collective approach, which includes the companies and union rights. There are many examples

of this that I am happy to talk you through—for example, the work that trade unions are doing with Unilever, the work that is being done on the accord in Bangladesh et cetera.

The other thing that is important is enforcement; therefore, complaints should be based on the failure to take these responsible steps. A part of this is ensuring that companies do due diligence to ensure that human rights are protected and that victims of abuse have rights to remedy, and not only in their own operations. This includes providing unions with right of entry, because unions can help workers to feel confident about raising these issues. This is already happening across the world. In February 2017, France adopted duty of vigilance law, requiring large companies to implement a vigilance plan stating the measures taken to identify and prevent the occurrence of human rights risks resulting from the activities of companies they control, and the activities of subcontractors and suppliers on whom they have a significant influence. A whole heap of other models are in our submission.

Another way the Australian government can lead is through its procurement practices. Once again, under the UN Guiding Principles on Business and Human Rights, the state's duty to protect extends to situations where a commercial nexus exists between public actors and businesses, such as when government bodies purchase goods and services through public procurement and in connection with contracting out in privatisation. As we are one step in advance of ensuring that this happens, the recent Commonwealth procurement rules inquiry recommended that the Attorney-General's Department oversee the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulations. This inquiry was supported by all political parties.

These measures, combined with the transparency part of the MSA, would pave the way for Australia to show the world that it is not only fulfilling its role as a good global citizen; it is leading by example. Even more importantly, it would re-assure working people in Australia, whether they be local workers or migrant workers, that they have been protected and looked after by this country's laws. Thank you for your time; I look forward to answering your questions.

CHAIR: Thank you, Ms Maksimovic, for your opening statement. Which elements of the French duty of vigilance legislation—to expand upon your submission—does the ACTU propose would be appropriate to introduce in Australia? On page 36 you say that the act should allow victims of modern slavery to seek civil remedies directly against companies in Australia which exercise significant leverage or control over a supplier or contractor and fail to put in place systems to prevent such violations from occurring. How do you see the opportunity for such companies to seek civil remedies balancing with encouragement for companies to actively look into and report what is going on in their supply chain—rather than hiding it in case they come across a person making a lawsuit against them, with all the legal costs associated with that? How do you get the balance right? It is sort of two questions. I am happy to repeat them, if needed.

Ms Maksimovic: You might have to repeat the second one.

CHAIR: Firstly, which elements of the French duty of vigilance legislation does the ACTU propose would be appropriate to introduce into Australian law?

Ms Maksimovic: I will go into my submission. Due diligence is about making sure that companies have conducted an assessment of what they are doing in terms of labour rights, child rights, and women's rights, and then examining the company's direct operation supply chains and other business relationships, particularly in these high-risk environments. That means identifying these risks, then looking at what kind of action plans they can have to mitigate such risks, and developing a process for informing these business decisions around things like their supply chains. Often those suppliers will tell us, when we go into these factories, et cetera, that they are being forced to underpay people and make them work overtime because of the kinds of things that the main companies are forcing them to do in terms of just-in-time production, particularly in the fashion industry, where there is a high turnover of everything that has to be done. These are the kinds of things Australian companies could be doing. If they can say, when something happens, that they have done this work, then their liabilities are going to be much less. What was your second question?

CHAIR: On page 36 you mentioned victims of modern slavery seeking civil remedies in relation to where companies in Australia exercise at least significant leverage or control over a supplier or contractor. It might be worth defining how you would measure whether they have significant leverage or control over a supplier to begin with.

Ms Maksimovic: An example of that is what has happened with the Bangladesh Accord on Building and Fire Safety. In Bangladesh, the Rana Plaza factory was audited twice and people were told that everything was fine. When it came to the fire, which killed 1,200 people, the companies together with the trade unions said: 'We have to accept that this is our responsibility'. In accepting that responsibility they have had to do so against what the

government is doing. The government refused to be a part of this agreement. Companies can have a big amount of leverage and power in regard to what happens to these workers. They have done the accord despite the fact that the government is not a part of it, because the buyers—a whole range of brands involved in this—have got together and said, 'Together we can make sure that 400 factories are safe.'

CHAIR: That makes sense. How do you then balance the access to civil remedies for victims of modern slavery—who may be within the supply chains where a company is deemed to have significant leverage or control—versus encouraging companies to actively look into their supply chains and report what they are doing, as opposed to hiding what they are doing for fear of those civil remedies or lawsuits against them, or the cost of defending those lawsuits? How do you get the balance right?

Ms Maksimovic: How do victims get access to remedy?

CHAIR: If there is access to fewer civil remedies not only for the company that knows something is happening but where companies have not necessarily looked well enough into their supply chains, how do you balance the victim's access to civil remedies versus the company actively looking into the supply chain, if that makes sense?

Ms Maksimovic: It is up to the company to make sure that they have done that. That is what the UN Guiding Principles on Business and Human Rights say; that it is their responsibility. So balancing it against the victims having access to remedy is simply by saying, 'You're better off doing this rather than having to go through a remedy process,' whether it is a civil remedy or whether it is something that goes through the OECD guidelines for multinationals.

CHAIR: I meant: do you think having civil remedies there when it goes beyond just the immediate company to the supply chain might discourage companies from reporting modern slavery practices within their supply chains and just try to hide it and fix it behind the public's view?

Ms Maksimovic: No, it shouldn't. Companies should be praised if they acknowledge that there are problems, and they should be given time to look into these problems. This is where, again, we work with civil society and trade unions who have experience in how to fix these problems. Trade unions often choose to collaborate with the companies because we do not want people to lose their jobs. We do not want companies to be shut down. This is the worst case scenario for our workers because they need the jobs. We just want them to have decent jobs.

CHAIR: Do you have any insight into the different types of visas and which visas in particular have been problematic, particularly tied visas where the employer has a say in signing off documentation where modern slavery practices have been found? Which visas are most problematic, in your opinion?

Ms Maksimovic: All of them. The working holiday visa stuff, with its 88 days, means that people feel like they should either pay someone to have a job or they are not paid at all—this is very clear in the Fair Work Ombudsman's report around the working holiday visas. The 457 visas are tricky because often people come through migration agents. Those migration agents charge them a fee. In one case where I was involved they were Filipino workers who were getting paid in US dollars in the Philippines. They weren't getting paid correct amounts in terms of the wages we have in Australia; they were getting paid in the Philippines. In the Philippines the agency that sent the workers through the employers who hired them was also deducting fees for what they had done. They were then living in a house with 30 people in a room, being forced to pay for the accommodation. That is also entirely problematic.

Increasingly we are seeing service contractors; a lot of them come under free trade agreements we have done. The service contractors are meant to be here for three months. A lot of people want to stay—I don't blame them; no-one blames them—because Australian wages and living standards are so much better than in all of Asia. This is why Australia has such a big responsibility—because if you look at the stats around modern slavery and slavery in general, you will see that a lot of this happens in Asia. We are an important leader and player in this. They have the right to be paid properly. The biggest thing we have seen is people being threatened about being deported. This is something other people have talked about. But that's the biggest thing. Sometimes they do not know their rights. Sometimes they don't speak English.

Different communities and different cultures have different approaches. It is very hard to talk to Chinese workers because they fear the state. They fear unions, because their unions are not independent trade unions. Filipino workers and Korean workers have an experience of trade unions, so they are happy to come and talk to us. There are a lot of complex issues. Depending on the visas as well, you have a lot of young workers. For example, after the Global Financial Crisis these people came from England and Ireland. We tried to talk to them; it is not like they can't speak English. We said to them, 'You have to make sure you that are getting paid right, that you are getting your superannuation, and that no-one is going to mistreat you by making you work 14 hours a

day', et cetera. They were being told that they could get deported, even though it wasn't true. You cannot deport someone if they are on a working holiday visa. It doesn't work like that.

CHAIR: Do you have any solutions to untie tied visas, such that the employer has less responsibility for the sign-off, while at the same time ensuring that the person under that visa is still fulfilling the requirements of that visa?

Ms Maksimovic: Yes; I think it is called regular migration. There was a time during the mining boom when people said, 'We don't actually have enough workers to come and do the work that needs to be done.' I am not sure if it is true, but let us say it is true. But since then we have created all these types of visas and we now find that we have people on student visas who are actually working 40 hours a week. They have been exploited by the registered training organisations who are charging them. I have a case of someone who was charged \$10,000 for their course and when they tried to go to their course at night the teacher was not even there. We have created this whole system where all these people just want to come, they just want to work and they just want to be treated with dignity. This is something that we used to do when we had the proper permanent migration system. I think we need to look at that. I think we need to look at reforming the migration system.

We would say in the Australian union movement that some of the best work that we have done together has been with migrant workers; we are based on a lot of migrant workers coming to Australia. But back in those days, which people are going to say is very old-fashioned of me, we all had rights. When my family, including myself, came to Australia, we had rights. There was no fear that anyone was going to take us back or deport us. We had access to social services et cetera.

I think we need to maybe shift back into that kind of scheme and then really look at: what are the labour shortages that we have? Have we tried to train people? Have companies tried to train people? And then finally, after going through that process, we may say, 'We clearly don't have enough workers to do this so can we bring someone in and make sure that they are getting paid properly?' Of course, there are people who want to come and go because they want to go and see their families. I am not saying that we cannot do that; we just have to go back to the basics.

CHAIR: Thank you. Ms King.

Ms MADELEINE KING: Thank you very much, Ms Maksimovic, for coming in today, given you have just come back from a long flight. Thank you—and the ACTU—for your excellent submission. I also want to recognise the great work that the ACTU and the affiliated unions do in generally protecting workers' interests but also in relation to migrants that work in and around and offshore from Australia.

What you said a moment ago about victims not having rights—and, therefore, those that exploit them are able to exploit their fears about being deported—hits the nail on the head; very much so. I hope that we might be able to look at that migration scheme as well. Whether it will come into the modern slavery act I am not really sure, but I think it is a very good point well made.

One of the recommendations in your report is about the extraterritoriality of any legislation, that it should apply extraterritorially and that Australian companies operating abroad should disclose the risks in their supply chain domestically and overseas. Can you expand on that a little bit more?

Ms Maksimovic: Yes. That is one of the issues with the UK legislation, as far as I know, because there is a whole system of companies, their subsidiaries. Our view is that every single company that has subsidiaries overseas—where, let us face it, labour rights are probably even worse than in Australia—should be able to ensure that those workers are not being abused. That is where it is important, because Australian companies have a reputation to protect. I think we have to say that. I talked about the other cases, but recently, after 30 years of going to-and-fro, unions have managed to have an agreement with Rio Tinto that, wherever they operate, they will adhere at least to the minimum or award wages and ensure that people have access to pensions, leave, sick leave et cetera. So there is now a memorandum of understanding.

Rio Tinto, as I said, took 20 years of campaigning, but they eventually realised that, whatever they do, they cannot just say, 'We'll do the right thing in the UK and Australia, but we're not going to do the right thing elsewhere.' This is important also because we do not want companies saying, 'These laws are so hard, so we'll just go somewhere else where the laws don't apply,' or, 'There are laws, but no-one enforces them.' Am I making sense?

Ms MADELEINE KING: Yes, you are. I understand what you mean. It is the reputation of the companies too. Especially with a large company like Rio Tinto, it is in their best interests to make sure that their whole supply chain around the world is—

Ms Maksimovic: Fundamentally it is also about consumers. You have seen what has happened at Apple and Foxconn and you have seen how much drama that has created. It does actually mean that people are paying attention. It is not just trade unions that are paying attention; it is a whole range of consumers. For example, looking at the Adidas submission, we have been working with Adidas for 30 years, ever since they started having production in Indonesia. They have learnt their lessons. It took a while, but now they are doing the right things. They are going through all of their suppliers through the different tiers. They are working with trade unions.

In Indonesia there is a thing called the labour protocol under which they make sure that in every single factory people have the right to freedom of association, the right to join a trade union and collective bargaining. This is something that, in an important way, the modern slavery act and the registry would allow us and would allow other companies to see what the good examples are so they can follow them—and not just what the bad examples are. Of course, the bad examples are also useful in terms of people being able to identify what needs to happen and which industries we really need to focus on.

Ms MADELEINE KING: Thanks very much.

Senator GALLACHER: Courtesy of Twitter, there is a prosecution in the Federal Court today, I think, regarding an Afghan refugee employed by a Victorian wholesaler, with a \$16,000 fine for the employer and a \$644,000 fine for the company. So what do you say to those who say that we do not need the modern slavery act, that this is actually working, and here is an example of why it works? A person was a refugee, was paid 10 bucks an hour for three years instead of the award wage, and the Fair Work Ombudsman came along and successfully prosecuted it. Why do we need the modern slavery act in addition to the existing framework we have?

Ms Maksimovic: We need the modern slavery act because there are a lot of people who are not reporting because of the fear that I just discussed. So that is number one. We need the modern slavery act because it raises awareness. Part of that awareness will be about companies having to disclose what they are doing to make sure that consumers and civil society groups can be reassured that they are doing the right thing. That is not something that exists in our current laws. If you talk to the Fair Work Ombudsman people they will tell you that there have been a number of companies that they have fined numerously. It does not stop them.

I hate to say it, but we need to act in relation to those companies who keep breaking the rules. Sometimes it is much cheaper for them to do this if they are companies that make a lot of money, if they are companies that can do things like phoenix. They can just shut themselves down and reappear again by going bankrupt and so on. This is why we need this. We need to make sure that there are even more severe penalties and to make people listen and then, hopefully, others will follow suit.

Senator GALLACHER: Transparency would make these companies visible to either the end user or the product line, so to speak.

Ms Maksimovic: Yes. Transparency is really important. That is the biggest reason to have the modern slavery act, because we just do not know what is going on. It is really hard. We have worked on FOIs and we have tried to work with registries et cetera, but we do not have the resources to do this necessarily. Often it is really not possible to find out what is happening because of the way that companies are now constructed, where there is a very complex set of subsidiaries and labour hire. There is a whole range of these things. This is why companies are saying, 'We use this, this and this with different names.' We can then actually say, 'Okay, everything is all right here,' or, 'Things are not right here.'

Senator REYNOLDS: Thanks for your evidence here today. I just wanted to pick up on one of the issues that you raised in relation to what categories of shortages we actually have here and what visas—who do we need to bring in? When we were in the UK we heard evidence about the type of modern slavery they are finding. Things like nail bars, massage parlours and car washers were consistently discussed. Has the ACTU or any of your members had a look at some of these areas specifically? What they were saying in the UK was that they were appearing in the High Street. People walked past them every day, but nobody was stopping to say, 'Who are these women'—mostly—and men who we are paying to get our nails done or get our car cleaned?' Have you looked into some of those areas in terms of why we have so many?

Ms Maksimovic: Yes. United Voice, which represents some of these services workers, are working very closely on looking at some of these cases. I think they made a submission to this inquiry. They will be able to tell you what is going on and what is happening.

A lot of the time you will find that there is a particular group of people from a particular country that may be running the salons et cetera. The reality is that those people are all very scared of saying anything. Even though the trade unions are trying to get in there and talk to them and organise them, they have all these links within the

community. Also, it is not just the threat of deportation; a lot of the time it is a threat about what might happen to their family living wherever it is—whether it is Vietnam, China, India et cetera.

United Voice is working on this. The NUW is doing a lot of work on agriculture. The CFMEU is doing a lot of work on construction. The nurses are doing some work on what is happening there. Even though, in theory, all nurses should be getting paid exactly the right amount, it does not necessarily always happen, particularly in the aged-care sector. A lot of unions are particularly looking at certain aspects of different industries.

Senator REYNOLDS: Maybe I will go back and have a look because I have not read United Voice's submission. Are you aware of any circumstances where—for example, in some of these nail bars or massage businesses—they are in any servitude-type positions, debt bondage, or getting paid very little and having to work under slave-like conditions? Are you aware of anything like that in those industries?

Ms Maksimovic: A think a lot of these people would come through a student visa. The student visa of course allows them to work for 20 hours a week but then the rest of the time they are supposed to be studying. A lot of the time they do not have that time to study. In the 7-Eleven case these were all Indian people coming through on some kind of student visa. They literally were not able to take 15 minutes to go to the toilet, not to mention all the violence that they had to suffer. Obviously what happens is that, if you are open at 4 o'clock in the morning and a bunch of drunk guys come in, they start doing things like throwing things at you et cetera. A lot of them had a lot of health and safety issues. I think a lot of these service industries you are looking at have people on working holiday visa workers or student workers.

Senator GALLACHER: That brings in the coercion. You get 20 hours of work a week under your student visa but someone works for 60-hours a week and then the employer threatens to tell on you.

Ms Maksimovic: That is right.

Senator GALLACHER: You are in that sort of servitude space.

Ms Maksimovic: That is right. The minute someone says, 'Well, actually you've broken the rules which means I can dob you in and you are going to have to go'—which comes back to the conversation you were having before with my colleagues from the Salvation Army, ACRATH and the Uniting Church—it is all about these kinds of things that people tell you. You do not really know—and even if you do know—you still do not know that if you go to the police the police are not going to take their side, which is a big issue.

Senator GALLACHER: You cannot complain about someone breaking the law if you broke the law yourself. A policeman will tell you that. I have even heard a magistrate say, 'Don't come in here complaining about the law if you've broken it yourself.' This is one of the problems that you get when people work 60 hours when they are only allowed to work 20. They are in a position of leverage.

Ms Maksimovic: But the question there is: were they forced to work the 60 hours because they were being underpaid?

Senator GALLACHER: How do you prove it?

Ms Maksimovic: Yes. A lot of that stuff is about payslips and people either not giving them payslips or giving them incorrect payslips. In one of the cases that I had, someone was getting payslips, and then the minute they got paid they were driven to go and take money out from the ATM to give it back.

Senator GALLACHER: Give them 20 hours pay for 60 hours work.

Ms Maksimovic: Yes.

Senator REYNOLDS: Can I ask one thing following on from that. It is in relation to those situations. Have you heard of anyone in these situations who has not been paid as a PAYE but has been forced to take out ABNs? They are paid in that way so that they are significantly underpaid because they are then not getting an hourly rate, they are getting a contracted rate. Have you heard of those circumstances?

Ms Maksimovic: Yes. This has been in a number of submissions that we have put in on temporary visa workers. There are two main issues. One is the labour hire industry. Even with the labour hire industry some of them will say, 'Well, you have to get an ABN.' What the ABN means is that essentially you do not get any super, you do not get any access to any of the other rights that normal workers have. Proving that actually someone is not working on an ABN but is in the direct employment relationship is another difficulty in terms of how this works, which is why we have asked that no temporary visa worker should be asked to acquire an ABN. Let us remember, they are not contractors. They are not people who are living a nice, independent life and feel like, 'Oh, maybe I'll do this project. Maybe I will do this one.' It is a totally different relationship.

Senator SINGH: I just want to delve a bit deeper on that. You raise in your submission the establishment of a national labour hire licensing and regulation scheme. I think you are referring to the Queensland scheme as an

example there. Is the idea of that to look at this issue of the role of these labour hire companies and this use of the ABN as opposed to PAYG for those workers and the exploitation that goes on because of the lack of licensing regulation for labour hire companies? What should we look at if we are going to establish such a scheme?

Ms Maksimovic: The Queensland government has done this. I think the Victorian government have done an inquiry, and I think they are looking at what kinds of laws they will have. But I also think that federally there should be these laws. The reason there should be these laws is that labour hire companies essentially treat people like they have the right to tell them when to come, when to go; they have the right to say, 'Okay, you are going to be working an extra how many hours but actually we are not going to bother paying you for those hours because you have been here for eight hours and the other six you work we are not going to bother paying you for.'

Really the licensing thing should be about saying every labour hire company should have, No. 1, a list of the companies that they are working with to make sure that there is transparency in their chain. They should be able to be looked into so that if they break the law they are then denied that licence, and also ensuring that they are not able to do the Phoenix thing again, which is just set up another labour hire company. This means looking into who is the director, looking at all those names et cetera.

If you saw the *Four Corners* report, labour hire is one of the biggest issues that we have. A lot of that is about basically the casualness, the precarity, the fact that people come and go, the fact that the employers think they can just tell them to come and go and that companies use that excuse to say, 'We are not responsible because we have given this to the labour hire company and if they have broken the law, if they are exploiting people, if they are sexually harassing them, if they are doing these things, it is not us.'

Senator SINGH: They do not take responsibility.

Ms Maksimovic: Yes. They do not take responsibility.

Senator SINGH: Because they are not the employer, as such.

Ms Maksimovic: For vulnerable workers like migrant workers in a direct employment relationship, it is really important.

Senator SINGH: On that then, do you think that with this idea of a modern slavery act there should be the establishment of a central repository for businesses to provide their accountability and their transparency of whether or not there is slavery in their supply chains? Should labour hire companies be added to that central repository?

Ms Maksimovic: Definitely. Who are they using as their supplier of labour should be added to that list. And that is one of the ways in which you know that you can try and find out what is happening. It is not just the company but every single supplier, which includes labour hire companies. Labour hire companies themselves should have to say, 'Okay, we are doing the right thing to make sure that these workers are not being treated unfairly.'

Senator SINGH: You actually refer to establishing a government-run central repository of statements and introducing penalties for non-compliance. I am just interested in where you see that sitting. Obviously there has been some discussion about establishing an anti-slavery commissioner which is independent from government, but obviously funded by government in some shape or form, and whether that be the place for such a repository. I am interested in where the penalty requirement sits as well. I know you say 'government run' but what do you actually mean by that? Where do you see that sitting?

Ms Maksimovic: It is not in our submission because we did not get a chance to discuss it with our affiliates. We are slaves to our affiliates. We do believe that a commissioner should be the one that has the resources and the ability to enforce. We do think maybe something like what Mark said, whether it is the ACCC or someone, should be the ones that have the actual information and the data, because I think the key is to have the commissioner being able to say, 'Okay, we've looked at this data.' But the data has actually been with the government to make sure that people feel like they can give it to the government so that they are not fearing, 'Okay, if we submit this information to the commissioner then we are going to be in trouble.' It is somehow having that a little separate. Am I making sense?

Senator SINGH: Finally, you talk about extra-territorial application. Do you want to explain that a bit?

Ms Maksimovic: It just means that the companies, the subsidiaries working overseas, should be subject to the modern slavery act. They should basically be. Victims in Bangladesh who have been abused—underpaid, overworked, engaged in any kind of debt bondage et cetera—should be able to be a part of the due diligence that companies in Australia and their subsidiaries are doing. Obviously we have a problem in Australia, but these

companies are also involved in some of the problems in other countries. One of the faults of the UK act is that it does not actually deal with extra-territorial issues.

CHAIR: If there are no further questions I would like to thank you very much for your evidence, as well as your comprehensive submission, which will greatly help our inquiry, and for the time you have taken from your work today. I do note that you will be given a copy of the transcript of your evidence for review. Thank you once again.

CLEMENT, Mr Noel, Director, Migration, Emergencies and Movement Relations, Australian Red Cross

SEIGNIOR, Ms Helen, Acting National Manager, Migration Support Programs, Australian Red Cross

[16:18]

The following evidence was taken in camera but was subsequently made public at the request of the committee—

Mr Clement: Thank you very much for the opportunity to be here and for agreeing to do this in camera. Very briefly, as you may know, the general approach the Red Cross takes globally is working directly with the authorities, so when we do submissions we tend to provide them in camera as confidential submissions. So we appreciate your willingness to do that.

A quick bit about the Red Cross: as you know, we are part of the Red Cross and Red Crescent Movement internationally. We are one of 190 national societies globally. This issue of trafficking and slavery-like practices is an issue across the Red Cross and Red Crescent movement. In Australia, it is an issue where we are really active. We have been involved with it since 2009. Our entree was starting to deliver the support for the trafficked peoples program—which I will get Helen to talk about briefly—and that was a deliberate decision on our part to get some insight into the issue in Australia. It's an issue we are aware of from our sister national societies around the world. A number of national societies are fairly engaged with it. We had some sense of it but had really struggled to get a handle on how significant an issue it was in Australia, so that's why we got involved. This area is generally, in terms of migration and trafficking, a strategic priority for our organisation and our movement.

There are a few quick points I wanted to make. I appreciate you've had a lot of witnesses and you obviously have a lot of knowledge in this area. For us, our concern is that human slavery and slavery-like practices remain under-reported and underdetected in Australia. We believe we're scratching the surface in terms of the support that we provide to people through the very important program that's delivered. It is funded by the Department of Social Services. We believe part of this is because vulnerable people are falling through the gaps. The frontline responders don't know how to identify, they don't understand the indicators and they are not even sure where to refer people for support. So we think there are some significant gaps there, particularly at the front line, in being able to appropriately identify and refer cases.

We also believe that there is more that can be done to support people in being able to report and identify trafficking or slavery-type issues. The people themselves, as I'm sure you appreciate, are fearful. They're fearful of authorities and they're often under significant coercion and threat. There are a number of reasons why people may not identify as people who've been trafficked. We appreciate that there are a number of things that have already been done and have been very pleased to be part of the national roundtable on human trafficking and slavery. There are some good steps that have been taken: the Human Trafficking Visa Framework in 2015, a new transition period in the support program, the extended initial support for people who are vulnerable, and 45 days of support for people irrespective of whether they are going to be able to participate in a criminal investigation. For us, these have all been really positive developments.

But, as you will see in our submission, there are some areas that we also identify where we think significant improvements could be made: addressing some of the significant barriers around reporting; training and sustained awareness activities, particularly for frontline responders; and also the issue around centralised reporting and data collection.

I'll highlight another couple of things and then, if it's okay, get Helen to very quickly give you a little bit of detail on the program itself. The role of an independent commissioner or a similar function: we're not wedded to how the function works, but some nationally consistent, joined up and holistic response to trafficking is what we're seeing as a great need. The other thing I will flag is support for people beyond the support that's currently provided. We think the Support for Trafficked People Program is great. It provides terrific support for people who are witnesses. There is some initial support for a wider group, but there are significant numbers of people, we believe, who are falling through the gaps or who may not be credible witnesses or be willing to be witnesses for a range of reasons but have humanitarian support needs. We see that as an area that it would be great to get some progress on. I will ask Helen to give you a little bit on the program itself.

Ms Seignior: Thank you, chair and committee members. It might be helpful to understand very briefly what the support program offers. It's a program that is a core part of the Australian government's national action plan, and specifically the official program to support victims or suspected victims of trafficking to get the help they need to start recovering from the experience. The way the current program is set up means they can receive 45 days of initial support, but the expectation is that they'll get support alongside their collaboration in an investigation, so they're supporting law enforcement to investigate their case. It means that some people might be on the program for two months and then need to leave and be transitioned to other available services or return

home. Others we have supported for many, many years while the investigation goes on or, in a handful of cases, where there has been a prosecution.

The program allows us to have very specialised caseworkers around the country. We are expected to and will respond any time of the day or night, 365 days of the year, when the AFP give us a call and say someone needs support. Essentially, we can provide access to safe accommodation, income support—meet really basic immediate needs—and make sure that people have access to health care, counsellors, psychologists. Everything is tailored to the needs of the person. Very importantly, I think, the caseworker role is to really support that person, provide the emotional support they need, identify their needs and work out what services they need to best meet those needs. It will vary according to the person.

Subcommittee adjourned at 16:57