

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON HUMAN TRAFFICKING

INQUIRY INTO HUMAN TRAFFICKING IN NEW SOUTH WALES

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At Macquarie Room, Parliament House, Sydney on Thursday, 15 June 2017

The Committee met at 9:00 am

PRESENT

The Hon. P. Green (Chair)

The Hon. G. Donnelly

Dr M. Faruqi

The Hon. S. Moselmane

The Hon. Dr. P. Phelps

Mr D. Shoebridge

The CHAIR: Welcome to the fourth hearing of the Select Committee on Human Trafficking in New South Wales. The purpose of this Committee is to examine the role and effectiveness of New South Wales law enforcement agencies, legislation and policies in responding to human trafficking. I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay my respects to the elders past and present of the Eora nation and extend that respect to Aboriginals who may be present today or watching the proceedings online. Today we will hear from representatives of Konica Minolta, the Commonwealth Fair Work Ombudsman and the Salvation Army. Unfortunately, Mr Andrew Forrest, who was scheduled to appear this morning, has withdrawn due to other commitments. I hear he is enthusiastic to appear at a later date.

I make some brief comments about procedures for today's hearing. The hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing, so I urge witnesses to be careful about any comments that they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised they can take questions on notice and provide an answer within 21 days. I remind everyone that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. To aid the audibility of this hearing, I remind Committee members and witnesses to speak into their microphones. In addition, several seats have been reserved near the loud speakers for people in the public gallery who may have hearing difficulties. I ask people to turn their mobile phones to silent or off. I welcome our first witnesses, Ms Laura McManus and Ms Cindy Reid.

LAURA MCMANUS, Ethical Supply Chain Management Consultant, Konica Minolta Business Solutions Australia, affirmed and examined

CINDY REID, Director of People and Culture, Konica Minolta Business Solutions Australia, affirmed and examined

The CHAIR: Do either of you have an opening statement?

Ms McMANUS: Yes. Good morning and thank you, Chair, for the invitation to share Konica Minolta's experience today. I extend that thanks and pass on an apology from our managing director, David Cooke, who is unable to attend the hearing today. As someone who has been following the evolution of business and human rights in Australia, the work of this Committee and the current Federal inquiry signal an exciting shift in momentum. As a representative of a company that supplies to the New South Wales Government, we welcome the conversation today; it has huge potential for the New South Wales Government to be national and international leaders in responsible procurement. Briefly, I would like to address section 1(e) of the inquiry's terms of reference and cover four main points, including the current Federal inquiry into establishing a Modern Slavery Act, Konica Minolta's process of human rights due diligence and the impact of the United Kingdom [UK] legislation before tabling key recommendations for the New South Wales Parliament.

As you may be aware, Konica Minolta did not make a submission to the New South Wales Committee. However, we have recently submitted to the Federal Government Joint Standing Committee inquiry on establishing a Modern Slavery Act in Australia. I believe that was circulated to the Committee, so I will not go into detail, but I would like to highlight a few key points from the Federal inquiry process. On last check a few days ago, 173 submissions had been uploaded to the inquiry website and I believe a few more are still expected. Of these, 16 are from large private sector companies and more than 20 represent the view of industry and business associations and related entities. From these submissions, it is clear that Australian businesses support smart regulation on modern slavery, including supply chain transparency. This is evident from the submissions of three major banks, including ANZ, Westpac and NAB, as well as large extractive companies, Rio Tinto, Woodside and the Fortescue Metals Group. Major retailers Wesfarmers, Woolworths and David Jones echo this sentiment, as well as Nestle, which is a supplier to major food retailers.

With this in mind, I do not think it is a huge leap for the New South Wales Government to consider updating its procurement policy framework and tender process to incorporate key questions on human rights, including human trafficking. Many large companies are already doing this and for us, a business-to-business company which is considered a first-year supplier in corporate Australia, it is increasingly the norm. About once a week I will prepare a tender response or review and sign an existing customer's new or updated supply code of conduct with significant human rights clauses. To give you some context, Konica Minolta is a multinational Japanese business company specialising in office print and a suite of business technology solutions. While our Tokyo head office manages the manufacturing of our branded products, in Australia we take what is called a valued chain perspective to ethical sourcing, looking at the goods and services that make our business tick. This is anything from third party products such as 3D or wide format printing, to operations such as warehousing, logistics, to uniforms merchandise and property management, including cleaning services.

A good human rights risk assessment will not only assess suppliers from a spend perspective, but include other factors such as geography, product category, workforce composition, the nature of the supplier contract and the existing business relationship. I encourage the Committee to look at the United Nations [UN] guiding principles on business and human rights to further explore elements of what a good due diligence process is. As a global multinational, Konica Minolta has made a modern slavery transparency statement under the UK Modern Slavery Act. While the potential and full impact of the UK Act is yet to be realised, there has been a significant uptake in conversations and action from business on modern slavery. Moreover, it is reported that since the introduction of the legislation, there has been a 63 per cent increase in the number of victims coming forward, which is more than 4,000 referrals last year and a 70 per cent increase in convictions.

A current and glaring weakness of the United Kingdom Act, however, is its failure to include provisions on public procurement. As the single and largest procurer and employer in the State, public procurement is the biggest opportunity for the New South Wales Government to demonstrate leadership and have an impact. Considering too that New South Wales is the largest State economy at 33 per cent of gross domestic product [GDP] and that 41 per cent of Australia's top 500 companies are headquartered here, the New South Wales Government has an important role in creating a smart regulatory environment on business and human rights.

At present ethical procurement, as per the New South Wales procurement policy framework for the New South Wales Government of July 2015, is loosely defined. To address this gap, the Government could consider some key steps. First, update the procurement policy framework to include a commitment to addressing human rights on modern slavery and supply chains as defined by the UN guiding principles on business and human rights, communicate the updated policy framework and expectations to existing suppliers, review processes for supplier prequalification and request for tender with the view to embed minimum human rights standards, train procurement professionals in key high-risk product categories on the new standards and due diligence work flows. While the pending outcomes of a Federal inquiry should not stall the action of the New South Wales Government, it will certainly be critical to harmonise the requirements on business with any potential modern slavery legislation at the Federal level.

Beyond procurement, the State has an important role in training frontline respondents such as teachers, healthcare professionals and the police in identifying potential victims of human trafficking. Finally, the Government has a critical role to play in raising awareness among at-risk groups in New South Wales. I believe technology can have an important and often untapped role to play in this area. I very much recognise, as someone who does this work daily, that the task is daunting of addressing human trafficking, and more broadly human rights, in supply chains. I think it is an incredibly daunting one for an organisation the size of the New South Wales Government where suppliers are in their tens of thousands and product categories are incredibly diverse.

I encourage the Government to approach this as many businesses do, from incremental and achievable phases. It is about a process of continuous improvement, not a dash to the finish line. I think too there is huge potential for Australian businesses, especially those headquartered in New South Wales, to be leaders in mainstream in business and human rights in the Asia-Pacific region. However, business will only be successful if they are supported, guided and incentivised by government. To be truly effective it is important to create an environment for all organisations, both public and private sector alike, to say we do not yet have visibility but we will now do our best to find out.

The CHAIR: Ms Reid?

Ms REID: I have nothing to add at the moment.

The CHAIR: How does Konica Minolta work in such a competitive space if you are doing the right things while others are doing the wrong and selling the same product?

Ms McMANUS: A very good and interesting question. For anyone that knows the industry, Konica Minolta is a traditional, large-scale print industry and now under transformation to broader technology. If we do not innovate and do something different we will go out of business in the next 10 years. It is an important opportunity for us to be creative and do something different. It is a shrinking market, yet we are a company that still invests in effort and time and resources into something like this. Not only do we have recognition from our senior leadership that it is the right thing to do, but to an extent it is a differentiator from competitors. But it is certainly not the main motivating factor.

The CHAIR: Making a level playing field by changing the legislation ensures that government procurement lines are slave proof or traffic proof so that the competition is fair rather than one-sided. You are doing all the right things to make sure you are traffic proof while others are enslaving people to work at half the wage.

Ms McMANUS: Absolutely. I think there is a big role of legislation and/or just regulation to help level the playing field and to the extent that it actually just raises the bar, not only from the business perspective but for the people that are ultimately at the end of the supply chain.

The CHAIR: The Government is committed to cutting red and green tape for businesses, what do you say to those businesses who say this legislation will create more red tape in producing their product, there will be more forms to fill in and more checking to do? What is your feedback on the increased burden upon business if we were to have procurement lines that were checked for ethical resourcing?

Ms McMANUS: While it might be perceived as increasing burden and regulation I think it would have been seen in our paper to the Federal inquiry that we think that there is also something that is smart and good and necessary regulation. So for us I think if you ask any business leader if you are making goods and services with slavery and or any egregious form of human rights violation, if that is something that your company stands for, or is willing to accept, then you may see the extra regulation as a burden. However, if you are a company that ultimately wants to be sustainable I think we need to recognise as well that supply chains that have this type of practice in it, it is unsustainable to an extent, not only from a financial and competitive perspective but also the longevity of that supply line. So I think it is smart regulation.

The CHAIR: The social justice is the currency that you win on in terms of competition. Doing the right thing makes your product more attractive than a product produced by someone who is doing the wrong thing and using trafficked or slave practices to bolster their lead on competition.

Ms McMANUS: Yes, you could say that but I do not think the main motivating factor is to be different to the industry. We would much prefer to see the industry—like you say—level the playing field and be a leader to see people come along with us. We often talk about doing this work in a pre-competitive space and I think it is important to see while companies can innovate and differentiate if the end goal is ultimately to improve conditions at multiple tiers of the supply chain, you cannot go it alone. So you want to bring others along on that journey as well.

The CHAIR: Point three of your submission talks about identifying international best practices employed by governments, companies and businesses. Who would you say is leading the way with best practice?

Ms McMANUS: We are an electronics company, we are situated in the electronics industry, so that is the space I am most familiar with. At a global level we are a part of something called the Electronic Industry Citizenship Coalition [EICC], which has some of the leading practices in our industry. They do the standard setting from a code of conduct perspective to an audit perspective. They try to share data and information as to not increase an audit burden on suppliers. Within that space you can definitely see some leaders. Often called out would be companies like HP, Dutch company NXP Semiconductors. They were awarded last year the first Stop Slavery Award at the Trust Women Conference in December in London. So NXP, even to an extent Apple. While they are a consumer-facing brand—and often therefore targeted specifically for campaigning and action—if you take a look their processes and procedures are actually quite robust.

So, companies who have in fact faced something before. You could even put Nike into that category. In the 1990s they had the stitching of the football incidents and what not, and since then are now some of the leaders in the space. Looking to the United Kingdom and what we have seen come out of the UK Act, you could look to companies like Marks and Spencer, who are up to 10 years in their sustainability plan and I think just a few weeks ago released the next version of their modern slavery statement as well, which was more robust.

The CHAIR: You said the UK Modern Slavery Act does not contain the procurement initiative. Do you know why that is?

Ms McMANUS: I am not fully across why that is.

The CHAIR: I would have thought it was a very important pillar of the approach.

Ms McMANUS: How the UK act came about, if you know some of the history of the evolution of that legislation, even the supply chain and business piece was not in the first draft. It was actually businesses that came to the UK government and a coalition of UK businesses that demanded that section 54—the supply chain transparency piece—was in there. I guess because that piece came in late you could make the assumption that the leaked public procurement just did not make it. But from my understanding it is currently being tabled in the second draft of the second reading of the UK Act in Parliament.

The Hon. GREG DONNELLY: Going back to the start with Konica Minolta, what was the basis upon which Konica Minolta decided to proceed down this path—and if you are not sure please say so and we can give you the question on notice—was there an incident or incidents?

The Hon. SHAOQUETT MOSELMANE: What triggered it?

The Hon. GREG DONNELLY: What brought it about? There was obviously a starting point but what led up to that starting point?

Ms McMANUS: I guess there are two parts to answer that question. We are effectively the sales and services arm. We are the subsidiary of our global parent company. There is what is happening at the global level, which looks at things into how our branded product is made, and then there is what we do at the Australian level. At the global level they are well advanced and well down the track, which I think you will find with many multinational companies that have an office in Australia as well. I cannot point to their exact motivation to start on it but if you know the space, there is no doubt that the electronic sector is a high-risk sector—everything from the migrant workers coming in to work in factories, to the component level, to the raw material level where you are extracting. So we signed up to this coalition called the EICC in about 2012.

The Hon. GREG DONNELLY: Was this the Australian arm?

Ms McMANUS: This is the global arm. So globally we signed up to the EICC in 2012. I was not around then so I cannot point to their motivation but I would assume it was knowledge of knowing that there

was an issue in the sector and wanting to be part of the solution to that. For our Australian business, our kind of conversation started about two years ago and while it might seem a surprise perhaps to have this as the answer, we have a genuinely motivated managing director, David Cook, who cannot be with us today, who, outside of this, has an interest in kind of the anti-human trafficking space. He sits on an anti-human trafficking board. After hearing other business leaders say this could be an issue in supply chain, he took an interest in understanding what was happening in the Australian businesses, so that is where I came along to do that piece of work.

It is important to note as well, another interesting part of the motivation was we started to receive this from companies that we supply into. If you think of a supply chain, we supply to the Government, we supply to bigger companies, and bigger companies were asking us questions about our supply chain. So that was also, I guess, a signal from the market that this is something that is interesting and we did not have answers so we wanted to find out those answers.

The Hon. GREG DONNELLY: I refer to page 2 of submission No. 56 to the Commonwealth inquiry under the heading of Australian value chain, which states:

As a sales and services company, Konica Minolta Australia's value-chain incorporates all the goods and services that to our business. This includes logistics and operations such as transport, warehousing, property management and cleaning services, through to uniforms, merchandise and third party

I will use cleaning services as an example. As an organisation you have to clean and maintain various property that you may not own but you have and work within each set-up. Will you give a practical example of your cleaning services? Do you examine the bona fides of a company that has put in a tender to do the cleaning work?

Ms McMANUS: I will start and Cindy can perhaps finish. It is a good example and thank you for pointing that one out. I have put in this document that when you do human rights due diligence particularly you are encouraged to look at what they call a salient risk to the rights holder, not to the business.

The Hon. GREG DONNELLY: Will you explain that to the Committee?

Ms McMANUS: In a normal business materiality assessment or a risk assessment you look at risk to business; in a human rights assessment you look at risk to people. If you were to look at a normal business risk framework it might take, kind of, top spend and critical suppliers. If you did this in that context you would miss things like a cleaning service which is, comparatively speaking, low spend and from a branding perspective less of a risk to the brand. So what we have done when we have conducted our risk assessment is apply multiple different lenses which would then help us assess risk to people. In that process, knowing the context of the cleaning industry in Australia there has been a few headlines—there is a cleaning accountability framework—you would know that could be a risk sector in Australia. So they became part of our high-risk supply category and then part of the further due diligence phase.

What that phase looked like is there was a supplier self-assessment questionnaire sent out, along with our updated and new supplier code of conduct. In phase one which included cleaning, companies were encouraged to read the code of conduct and sign an acknowledgement of the code and then also fill out the questionnaire. I am going a bit off track but I will get back to your question as I think it is an interesting example. If you are in this space to make change, I think this is an important example, you send out a code of conduct which I will hand a copy to the Committee. People sign acknowledgement or compliance against it. I have circulated this self-assessment questionnaire which effectively asks different parts of the code of conduct: Do you have a migrant population workforce? Do you have contracts supplied in languages they understand? Do you have a statement on policy on human trafficking? I can share that document also if it is of interest.

The Hon. GREG DONNELLY: And: Do you pay award wages?

Ms McMANUS: Yes. What happens is there is a disconnect between what I found a supplier base signing off a code of conduct and then the answers that they would kind of give in the self-assessment context. That is not to say that we have a large supply base that is trying to actively kind of deceive. I think what it points to is kind of a larger scale issue where knee-jerk, tick-the-box compliance is not actually the answer and will not solve the problem. To counter that we work with those suppliers in that phase one group which is a small subset, which I encourage the Government to consider if it goes down this path as well, and work with suppliers more at a partnership level to understand their needs, what their current business looks like and what can Konica Minolta do to upscale them. For us, we are already a first tier supplier and then our next supplier is the second tier of, kind of, the bigger company and this is all new to them. To expect that they have the policies and procedures and standards the minute we send out a code of conduct is unrealistic. So we are taking a kind of, I guess, a longer term approach which includes Konica.

To get back to your original question, we have six offices around the country. We are in different States, we are a national business and we have different services to facilitate those buildings. In our New South Wales head office we have worked with our cleaning company to better understand where that is at. I will hand over to Ms Reid.

Ms REID: We have got a nice human story if it is appropriate to share with the Committee.

The Hon. GREG DONNELLY: Yes.

Ms REID: We have invited our property managers and cleaning services to the self-audit. We have got varied rates of participation. A nice example is in our head office building in Macquarie Park. Part of our culture really is all of our corporate social responsibility activities. The people in our organisation are very au fait with us as a caring employer. Many people were very friendly with the cleaner who came. We understood at some stage, having got to know her through some activities where we were partnering with herself and her husband in actually an art exhibition about Nepalese domestic workers, that she was overloaded with the work that she was doing. In fact, she would get in her husband to help her on the weekend, unpaid, to get the spider webs that were too high for her. We started having conversations with her and with her employer about how is it all working for her. She came to a mutual agreement with her employer, who was our property manager, that she would leave them.

We have hired her into a clerical position. If she came ordinarily for that role her English language skills and her clerical experience would probably not mean that she would get that role but us, as an employer with very much a focus on corporate and social responsibility being part of its culture, we thought we would like to support her into that role. Everybody in the organisation was very, very happy about it and we are providing her with English language skills and some clerical training. The difference we have made to this man and woman and their daughter and their family life as immigrants in Australia is marked and will really change them.

Mr DAVID SHOEBRIDGE: What about the cleaner who replaced her?

Ms REID: Yes, we are still very friendly with her as well.

Mr DAVID SHOEBRIDGE: Are they still run ragged and getting in their husband or partner on the weekend to clean out the cob webs? Have those fundamental conditions changed in the cleaning company?

Ms McMANUS: Exactly. So that is the point of due diligence. We are still working with the supplier to go through the due diligence process. I cannot really speak to it while I think we are still in the process but, yes, we are fundamentally addressing the root cause issue of that business. What we did not want to do, and what is easy to do, is just cancel that contract and get in a new supplier, because it does not fundamentally solve the issue of that business and it potentially puts those workers at greater or the same amount of risk if they were then to go out to another building. We are working now with that supplier to solve that issue through a continuous improvement process.

The Hon. SHAOQUETT MOSELMANE: It is very rare to hear of a company having a heart and being social driven; it is fantastic. Since you have taken on this altruistic, social justice, anti-slavery line, has the profitability of the company increased or decreased? Can you tell us more about that?

Ms McMANUS: Cindy might be able to talk about that but I will start. I actually really enjoy getting this question because we are in an industry in a market that is shrinking, yet our market growth is growing. I believe we had one of our most profitable years last year with myself as a full-time resource and headcount working in this space. I do not think many companies can make the line that they are losing profit because they are investing in this work.

Ms REID: If I may add, I believe that our ethical sourcing strategy, along with our other corporate social responsibility strategies and activities, particularly as well in diversity and inclusion, have helped us successfully partner with larger corporates and enterprises that otherwise we would not have had conversations with—with the likes of the Macquarie Bank and Wesfarmers, who are very interested in what we are doing—and we are sharing best practice now. I actually think it has benefited our organisation, but I would not be able to quantify to what amount. It feels like good people are interested in doing business with good people.

Mr DAVID SHOEBRIDGE: Thank you for your submission and for coming today. I am interested in whether your practices can be upscaled to State Government and how the State Government would go about ingrain these kinds of practices in its procurement and other work.

Ms McMANUS: Like I said in my opening statement, I acknowledge it is a very difficult and daunting task for a State Government of the size and magnitude and with the supply chain and the diversity of supplies

that you have. I mean, we are lucky in a way that it is a smaller supplier base, and we do not have this high turnover of suppliers either. I do not think the magnitude of the task is a reason not to undertake the task but I can answer it from the perspective of: if I were here to tackle it, this is the way I would—

Mr DAVID SHOEBRIDGE: As I understand it, your model would work best on an agency by agency level where they have intimate knowledge of not just the risks to them but the risks in their supply chain of exploitation. It should be devolved to an agency level to develop their own strategies, perhaps with central reporting. Is that how you see it?

Ms McMANUS: Right. I am not fully across the structure of how the New South Wales Government works or how all of the agencies work but, yes, it would sit best with the agencies being the owner of the contracts and the ones administering them day-to-day. That is definitely the level it should set.

Mr DAVID SHOEBRIDGE: That is what I am asking: That is where you should be putting the responsibility—at the agencies or the entities that are signing the contracts and doing the work at the ground level?

Ms McMANUS: Yes. Again, without full knowledge of how the structure works, I would agree that that is a good approach. However, I also think there is scope at the umbrella level for a commitment and a statement from New South Wales procurement. To be honest, as a supplier into government, we do listen and we do look for signals of what kind of priority expectations are, so if there is an umbrella commitment which is then operationalised at an agency level, from a day-to-day—

Mr DAVID SHOEBRIDGE: You say the UK law, for example, was a terrific signal and ended up having impacts not just in the UK but around the globe. Similarly, would a high-level statutory or other policy statement from the State Government be a good starting point?

Ms McMANUS: Yes, I believe it would be. Running parallel with the current action at the Federal Government level, I think we need to be careful that the processes in a way do not overlap and there is an extra burden in terms of what the outcome or the expectation on business is. I do not imagine that is the path this is going down, but absolutely a high-level statement and commitment is a good signal to business.

Mr DAVID SHOEBRIDGE: If we thought there was going to be delay in the Federal Government getting its house in order, do you see a benefit in New South Wales, as the largest State, making that initial statement, as it might have an impact around the country as people start seeing best practice and responding to it?

Ms McMANUS: Yes. I do not think the federal process should necessarily stall. Again, not being a public policy expert it is difficult to comment on a New South Wales process, but I imagine things like looking initially at high-risk industries or product lines in a pilot—this is not legislation; this is just action and policy which presumably is may be quicker to start than waiting for the federal level.

Mr REID: As a New South Wales taxpayer and community member, I would be very proud to be part of that community whereby we actually do take a leading stance on human rights. I think it would be a very positive position to be in—rather than waiting for the Federal Government to do something—to be able to stand out there and stand up for something. I echo Laura's views about being able to operationalise this being somewhat daunting with such a large organisation; however, to have an umbrella or a lead policymaker across all agencies would be a great starting place. Then to be able to go into the various agencies—and I would not have a good enough view as to which it would be easiest to operationalise—and start to pilot in those different agencies and take off in small chunks at a time whilst you are able to make that bigger policy statement to New South Wales and to the Australian Government would be a great starting point.

Ms McMANUS: To conclude on that point, from a business perspective, in a way we know that something is going to happen at the federal level, so businesses that are following this are already ready in themselves. I said earlier that it is not a big leap: I do not think the New South Wales Government would shock the market by adding a few tender clauses to a document as a starting base which is embedded in a bigger policy suite. We are doing these types of responses regularly to corporate Australia, so to do it then to Government would just signal that the Government is actually also just coming to the table as well.

The Hon. Dr PETER PHELPS: Konica Minolta might assemble its machines in South Korea based on parts that are built in Taiwan which received components from India made from constituent ingredients which are bought by a buyer in Johannesburg from Congolese cadmium. How far back in the supply chain are you realistically able to go?

Ms McMANUS: It is a very good question, and one that we get asked often. The process of our product and our machines is managed by our Tokyo head office. We have a team of kind of myself, in a bigger

number—of ethical sourcing procurement professionals who are working at that level. Their work has been at the first-tier level, starting with the main component factories where the product is finally assembled, and there is a plan to obviously go second and third tier where possible. We also have a conflict minerals statement and work closely with a Japanese industry group. Obviously there are a lot of tech companies headquartered in Japan and again, to reiterate, taking an industry approach to these issues is better than going at it alone. From the conflict minerals level and that raw material extraction, we work as a kind of industry group in those areas where there is raw mineral extraction.

Mr DAVID SHOEBRIDGE: So there are pools of knowledge around the planet that you can draw on, industry by industry.

Ms McMANUS: Absolutely, yes.

The Hon. Dr PETER PHELPS: So even though a Congolese broker might be buying cadmium from a whole range of sources, you can be sure that that person has never bought anything which might have been extracted by slave labour.

Ms McMANUS: I would have to double check with the processes at the Tokyo office. Right now—

The Hon. Dr PETER PHELPS: It is fine. You can say, "We have absolutely no idea".

Ms McMANUS: I was just going to say, we do.

The Hon. Dr PETER PHELPS: "We can only go back two stages."

Ms McMANUS: Correct.

The Hon. Dr PETER PHELPS: "We can only go back to our component manufacturers and component producers." And, that might be all you can realistically do, but to pretend that your entire chain is free from slavery is a stretch.

Ms McMANUS: Absolutely. It is not something that we claim or pretend. I have read some of the transcripts of the previous sessions and seen words such as "slavery proof" and "traffic proof" discussed and if it is possible to have an accreditation process for that, as someone working in the space, I would never claim that our supply chain is slavery or traffic free.

The Hon. Dr PETER PHELPS: That is okay, you can only do what you can do.

The CHAIR: Ms Reid, do you want to add anything to that?

Ms REID: I appreciate your point, Dr Phelps. It is somewhat early days in ethical sourcing. Organisations that are on this path need to be encouraged to continue it. They have only got so far so far. We cannot claim that we know that we are a 100 per cent slavery free. What we can claim is that we are well on the path to being curious and structurally robust in ensuring that there is governance in our supply chain from a human rights perspective. We are not there yet. We would love to be there soon. We do not believe that we can do that on our own. That is why working with the Electronic Industry Citizenship Coalition, and other organisations working on this path, is heading in the right direction. We are passionate about trying to work with our State and Federal governments to assist in this journey.

Mr DAVID SHOEBRIDGE: It is progressive. As you have more certainty in the first two levels and get that bedded down with good procedures you can work on the next level. It is a ratcheting up process.

Ms McMANUS: Right. What I really like about the EICC approach is that the over-arching framework is a management systems approach. It is about being audited against your management system. As Ms Reid said, that is the governance you have in place to identify, prevent and then ultimately remedy something when you do find it.

The CHAIR: Dr Phelps, your last question.

The Hon. Dr PETER PHELPS: In relation to the EICC provisions that you put forward, it states: freely chosen employment, that is an anti-slavery measure; young workers; working hours; wages and benefits; freedom of association; management accountability; risk assessment; and, management and supply responsibility. Is that really an anti-slavery measure or is that more about trying to expand the remit of Western industrial relations systems to second and third world countries?

Ms McMANUS: Good question.

The Hon. Dr PETER PHELPS: For example, in relation to working hours, 60 hours a week is apparently outside the code. When I was a Federal staffer there were some weeks where I did work more than

60 hours. Young workers: what happens if a 14-year-old decides that they do not want to spend their entire life knee-deep in buffalo excrement and mud in a rice paddy and thinks they would like to work in the nice, clean, air-conditioned factory even though they are 14. Would you deny them the opportunity to do so?

Ms McMANUS: According to international law and our company policy, yes. A 14-year-old is defined as a "young worker".

The Hon. Dr PETER PHELPS: So keep them poor and in mud?

Ms McMANUS: I would prefer—

Mr DAVID SHOEBRIDGE: Point of order: That is an unfair question and misrepresenting the witness's answer.

The CHAIR: Dr Phelps always has creative ways of deducing the information given to us.

The Hon. GREG DONNELLY: You have worked him out.

The CHAIR: I think he has made his point by the illustration.

Mr DAVID SHOEBRIDGE: Perhaps the witness could be allowed to answer.

The Hon. GREG DONNELLY: We worked him out a long time ago.

The Hon. Dr PETER PHELPS: Freedom of association, does that include extending trade union activities to these organisations? Is there a requirement that trade unions be involved in companies as an important part of this?

Ms McMANUS: I am happy to answer that question. Under United Nations guiding principles on business and human rights the framework businesses are signing up to, and what a lot of companies are articulating through their supplier code of conduct, is adhering to the international bill of rights, which is the international covenant on civil and political rights as well as the international covenant on economic, social and cultural rights. The other part of that is the International Labour Organization's [ILO] core fundamental freedoms, which does include freedom of association as well as the right to collective action and bargaining. A lot of companies are using this language. It is in codes of conduct.

I do not think companies could actively be seen as pushing a trade union agenda in countries where there is not one. From the research, which I am happy to share with the Committee, there is a group called KnowTheChain. They are based in the United Kingdom. They do benchmarking on these issues. They have done three benchmarkings across three different sectors—the information and communications technology [ICT], apparel and food—with the top companies in the world. In the benchmarking lack of worker voice gets the lowest score and is seen as one of the areas where a lot of these issues can be addressed if worker voice is improved. If you see that as a trade union agenda, then that is one interpretation. If you see it as an avenue to improve the lives of workers, that is another interpretation.

The Hon. Dr PETER PHELPS: Why would student workers be included in the definition of modern slavery?

Ms McMANUS: It is not. It is not included in the definition of modern slavery. It is included in—

The Hon. Dr PETER PHELPS: It says, "vulnerable to different forms of modern slavery. This includes: forced labour, child labour and student workers". Why student workers?

Mr DAVID SHOEBRIDGE: It is vulnerability. You are deliberately misrepresenting the submission.

The Hon. Dr PETER PHELPS: No, I am not. It says, "It is well documented that workers in the electronic supply chain are vulnerable to different forms of modern slavery. This includes: forced labour, child labour and student workers".

Mr DAVID SHOEBRIDGE: It is called vulnerability.

The Hon. Dr PETER PHELPS: Why are student workers included in the definition of modern slavery?

Mr DAVID SHOEBRIDGE: Why are they vulnerable, is the question that comes from this submission.

The CHAIR: Order! The witness can take that on notice. If I let the Committee at you I am between Dr Phelps and Mr Shoebridge and we could be here all day excising your full education on the matter. We do not have the time. Thank you for presenting today.

The Hon. GREG DONNELLY: The Committee would be interested in the document you referred to.

The Hon. SHAOQUETT MOSELMANE: It is great to see companies profiting while making sure the rights of the workers are protected.

Ms REID: Thank you.

The Hon. Dr PETER PHELPS: Excellent public relations exercise.

Mr DAVID SHOEBRIDGE: Point of order: Dr Phelps just made a gratuitous insult to these witnesses by saying, "excellent PR exercise". I think it is gratuitous and I ask him to withdraw it.

The Hon. GREG DONNELLY: It will be in *Hansard*.

The Hon. Dr PETER PHELPS: It is a public relations exercise. It might have additional benefits, but it is still a public relations exercise.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: The witnesses have attended of their own free will and they did not come to be insulted by a member of the Government.

The CHAIR: Order! I was in the middle of speaking to the witnesses. I ask Committee members to refrain from such comments.

Mr DAVID SHOEBRIDGE: I have a point of order and I ask that Dr Phelps withdraw the gratuitous insult to these witnesses made by a member of the Government.

The CHAIR: Order! I do not know whether *Hansard* recorded it. I took that comment as part of the parroting that occurs around the table on occasions. I was giving a statement of conclusion.

Mr DAVID SHOEBRIDGE: The reason I took the point of order is that Dr Phelps interjected and insulted the witnesses.

The CHAIR: Order! The comment was made, but it is not unusual for comments to be made and for people to have little jabs—

The Hon. SHAOQUETT MOSELMANE: *Hansard* will have picked it up.

Mr DAVID SHOEBRIDGE: My request remains.

The CHAIR: Order! I am not sure whether *Hansard* took it as a comment, because I was making concluding statements.

Mr DAVID SHOEBRIDGE: Through you, Mr Chair, I request that Dr Phelps withdraw the gratuitous insult from a member of the Government to these witnesses.

The CHAIR: I ask Dr Phelps to do so.

The Hon. Dr PETER PHELPS: I do not see any insult in suggesting that the activities of the public relations industry are in any way offensive or obnoxious. Public relations is a vital part of every modern company and every modern organisation.

The CHAIR: Order! I think everyone is mature enough to take those comments as is. Dr Phelps is not withdrawing the comment. Witnesses have 21 days to respond to questions on notice. There may be more questions in light of the evidence. The Committee thanks you for your time. I apologise for the disruption at the end.

Ms McMANUS: I am happy to take it on notice. I will respond.

The CHAIR: You are doing excellent work in the corporate sector and it is part of the solution, not all of the solution. It is fantastic for you to give evidence before the Committee. Please send my greetings to the chief executive officer and thank you him for making time for corporate staff to be part of the inquiry.

(The witnesses withdrew)

TOM O'SHEA, Executive Director, Fair Work Ombudsman, affirmed and examined

The CHAIR: For the information of the committee, Mr O'Shea needs to get away at 10.15 a.m. Mr O'Shea, would you like to make an opening statement?

Mr O'SHEA: No formal opening statement, but I do note the opening statement of Ms Hawkins of the Attorney General's department, given on 29 May on behalf of the Federal Government, and the Government's joint submission of 28 February. Apologies on behalf of the Fair Work Ombudsman for not being able to attend the whole of the Federal Government's session; we were before our Senate estimates that day, so I was required to give evidence there. I am pleased to be here to assist the committee and hopefully bring the Federal workplace relations aspect to the hearing.

The CHAIR: It is great that you are here. There are a lot of committee members who are very keen to ask you some questions. We will go to the Hon. Greg Donnelly.

The Hon. GREG DONNELLY: Thank you for coming along. Just on that point about the Fair Work Ombudsman, I have got submission No. 23 in front of me, which is the Australian Government's submission and I think is the one you may have referred to. It is a whole-of-government submission.

Mr O'SHEA: It was coordinated by the Attorney General's department. I am happy to speak to the elements of that.

The Hon. GREG DONNELLY: My question is specifically this—just to help us understand where we might find this information: Within the agency of the Fair Work Ombudsman is there a part of the organisation that is specifically focused on looking at this issue, or is it dealt with in the context of the remit of the organisation per se and is picked up as you go along and do your work?

Mr O'SHEA: Without trying to be obscure, it is sort of neither and both. We do not have a formal jurisdiction for slavery or anti-human trafficking. We are a workplace relations regulator; we both derive our powers from and are created by the Federal Fair Work Act. We operate in a civil jurisdiction, not a criminal jurisdiction, so our remit extends to the insurance of compliance with and education about workplace relations laws. As we have heard just this morning and from some of the previous sessions I have read, there is a bit of crossover between workplace relations, exploitation and that being, I guess, an indicator in the most extreme cases. What I am saying there is if there is slavery or human trafficking they are probably also not getting their workplace relations entitlements; it is probably a fair assumption.

Mr DAVID SHOEBRIDGE: It is kind of ipso facto with slavery.

Mr O'SHEA: Yes. We do not have a formal area of the Fair Work Ombudsman that specifically looks at anti-slavery or human trafficking. What we do have is an overseas workers team, which is a compliance team specifically looking at migrant worker exploitation, and we also have a unit that I am in charge of—

The Hon. GREG DONNELLY: Is that across a range of industries?

Mr O'SHEA: Yes. We do not have an industry-based compliance model, nor do we have a State-based compliance model; we have, I guess, a topic base—we have general protections or overseas workers or young workers, vulnerable workers, things like that, that work across States and across industries. We also have my area, which goes by the name of Migrant Worker Strategy and Engagement, and, again, that is taking a new approach to engaging with and coming up with strategies to ensure better compliance and education with the fair work laws from migrant worker employers. The closest we get to what you are asking about is migrant worker vulnerability, which we take very, very seriously.

The Hon. GREG DONNELLY: That was a very useful explanation of how the structure is set up and how it operates. We are pressed for time so I might just have one more area to cover and then I will have to pass on to other committee members. I may have to place some questions on notice. With respect to the Commonwealth Government's submission—I am not sure if you have got a copy of it; it is marked submission No. 23—there is one paragraph I want to take you to.

Mr O'SHEA: I do have it. What page is it?

The Hon. GREG DONNELLY: This is on the top of page 2 and it is on the Attorney General's letterhead.

Mr O'SHEA: This is the submission to this inquiry, not to the Federal inquiry?

The Hon. GREG DONNELLY: Correct. "Human trafficking and slavery in the Australian context". I want to go specifically to the second paragraph, and I will read it out so we can talk about it:

Australia is primarily a destination country for human trafficking and slavery, with the majority of trafficked people identified by Australian authorities to date having been women from Asia who were exploited in the sex work industry. However, in recent years Australian authorities have found men and women exploited in situations outside the sex work industry – such as in the domestic work ... are now being identified in numbers exceeding those identified as exploited within the sex work industry.

In terms of trying to get some numbers around or some dimensions to what is being said here, where is this sort of statement drawn from? Can one go and look at this? Because obviously there is something behind the statement.

Mr O'SHEA: Sure. A specific reference to the human trafficking and sex slavery situations would need to come from the Attorney General. What I can do is give our agency's understanding of an industry-based breakdown of what we are seeing. If we are talking about vulnerable visa holders, we see very little in the sex industry. Traditionally, sex industry workers are not employees; they are deemed to be other than that—they are normally contractors, under case law. We receive almost zero complaints from sex industry workers as well. Our work is focused on receiving complaints and doing work in the following industries: by far and away, vulnerable visa holders come to us from the accommodation and food services industry—32 per cent of migrant workers come from that industry; administrative and support services, which include clerical and cleaning—

The Hon. GREG DONNELLY: Could I ask you what you are quoting from there?

Mr O'SHEA: From internal Fair Work Ombudsman data.

Mr DAVID SHOEBRIDGE: Can you give us the numbers? Can you give us those documents and table them?

Mr O'SHEA: I can. I cannot give you these because I have made annotations on them, but this is public information.

The Hon. GREG DONNELLY: That is fine, but just gathering this together so it is clear—

Mr O'SHEA: Perhaps I will run through the top five industries for you.

The Hon. GREG DONNELLY: Please do that.

Mr O'SHEA: Accommodation and food services; administrative and support services; manufacturing, which includes agriculture, forestry and fishing; and the retail trade. Just to be clear: they are the industries that we see vulnerable migrant worker complaints coming from. That is not to say that that is a crossover with human trafficking or slavery, but to draw the distinction I made earlier: migrant worker vulnerabilities in a workplace relations context come from those industries.

The Hon. GREG DONNELLY: Just going back to the very start of your comments just then about the Attorney General's department, the Attorney General's department would have the numbers around some of these things?

Mr O'SHEA: I do not know; you would need to ask them.

The Hon. GREG DONNELLY: The statement here, and what I am trying to understand, is that the importation, presumably the majority of whom are women, to do the sex work was the main area. It is not clear whether that has come down as an absolute number, but certainly in percentage terms these other numbers have come up and now we have, I presume, overall an increase, which appears to be potentially growing.

Mr O'SHEA: The way I read that is that the environment is more complex than it used to be. We used to talk about human trafficking as the sex trade in Australia, and now we are seeing cases that go more broad than that. In our context, we see a lot of backpackers picking fruit and things like that and allegations of—at least the term used in the media—slavery. To take that as an example.

The Hon. GREG DONNELLY: I will have to pass the questioning on to other committee members. It has been very helpful. I must say that you have wetted my appetite; there is much more to ask.

Mr O'SHEA: In terms of timing, Chair, I do have a little bit over that time. It is just that I have an 11.00 a.m. appointment that I need to travel to.

The CHAIR: Just indicate when you have to go.

Mr O'SHEA: I can go through to 10.25 a.m., if that suits.

The CHAIR: That would be fantastic. I will ask something on that question. It talks about sex exploitation and you rightly go on to the other types of things. How was it ascertained that sex exploitation was the biggest form of human trafficking? How was it ascertained that they existed if they are under contract? It is obviously hard to put your finger on this.

Mr O'SHEA: Just to break those two statements up, when I say they are under contract what I mean is from a workplace relations Federal law environment they are not considered to be employees. There is no Federal definition of what an employee is.

The CHAIR: I am just saying that they were able to measure it then and then they say that actually now it has been overtaken by these other things. How was it measured back in that situation?

Mr O'SHEA: I am not sure that it says it has been overtaken. What it says is that we used to refer to human trafficking as the sex industry and now—

The CHAIR: So you are saying it is just generic?

Mr O'SHEA: I read it as a broad framing statement; that it is a broad problem.

The Hon. SHAOQUETT MOSELMANE: I am interested in your assessment, as the Executive Director, Fair Work Ombudsman, of the state of play in New South Wales as to the extent of slavery. Has exploitation increased over the past 10 years? Are there statistics that you have to assist us in your understanding? If the figures are increasing and the situation is getting worse is there a need for an anti-slavery commission or commissioner to be established? What is your experience?

Mr O'SHEA: I am not capable of saying whether or not slavery in New South Wales is getting better or worse. What I can give you is the context of my agency. We have formal arrangements with the Australian Federal Police. We are an inspectorate, which means that we investigate matters within our jurisdiction which are workplace relations matters. The reason we have a role in anti-slavery and in human trafficking is because we are quite effective and we are in the field and we are in workplaces; the theory being that when you are out in workplaces you might see something that is not quite right. We have no formal jurisdiction here. Our role is as part of one Federal Government, in fact, one Australia, to refer to the relevant authority, which is the Australian Federal Police or State police if we see something that is not quite right. That is our role.

The Hon. SHAOQUETT MOSELMANE: But do you have statistics?

Mr O'SHEA: I can tell you that in the last three years we have only referred four matters to the Australian Federal Police.

The Hon. SHAOQUETT MOSELMANE: Four?

Mr O'SHEA: Yes. Why is that? Is that because slavery is not a problem? Probably not. It is because the places we are going to for workplace relations compliance purposes are not things we see in those environments.

The CHAIR: So you do not go into brothels, for instance?

Mr O'SHEA: No, we do not, not unless there is a reason why we would. There will be some employees in brothels. We have done inquiries in the past into clerical workers in the sex industry so the people who work front of house or in other capacities in brothels, so we have done that in the past but not in relation to sex workers.

Mr DAVID SHOEBRIDGE: Can I get this straight. You see trafficked sex workers as independent contractors and therefore falling outside your remit, is that really what you are telling us?

Mr O'SHEA: No, that is not what I said. What I said is tradition—

Mr DAVID SHOEBRIDGE: Well, you see them not as employees, so if they are not employees what are they?

Mr O'SHEA: Well, what I am saying is that the case law to date is that sex workers are contractors.

Mr DAVID SHOEBRIDGE: What was wrong with my statement, which was summarising your position, that you see trafficked sex workers as independent contractors and not employees? What is wrong with that statement? How does that not reflect what you are saying?

Mr O'SHEA: I think it is the reference to "trafficked".

Mr DAVID SHOEBRIDGE: Tell me how it is wrong?

Mr O'SHEA: Look, perhaps it is correct.

Mr DAVID SHOEBRIDGE: So why are you cavilling with it? It is not your remit so you are not looking.

Mr O'SHEA: Yeah.

Mr DAVID SHOEBRIDGE: Okay. Done. Why is your list of industries so remarkably different to the Australian Government's list which Mr Donnelly took you to earlier? For example, you do not have construction, they do not have administration and support. Are different parts of the Government just not talking to each other?

Mr O'SHEA: No, there is a separate Federal regulator in terms of construction so the Australian Building and Construction Commission is responsible for the wages and conditions in the construction industry and site visits.

Mr DAVID SHOEBRIDGE: You have put in retail; they do not. You have put in administration and support; the Australian Government does not. Why are you saying one thing and the rest of the Australian Government is saying something else?

Mr O'SHEA: I am referring to the data captured for vulnerable visa holders and migrant workers who come to the Fair Work Ombudsman for wages and conditions complaints. These are not complaints about slavery. These are complaints about wages and conditions.

Mr DAVID SHOEBRIDGE: So yours is complaints based?

Mr O'SHEA: Yes.

Mr DAVID SHOEBRIDGE: That is your model—complaints based?

Mr O'SHEA: That is the data that I am providing, yes.

Mr DAVID SHOEBRIDGE: Is that your agency's model—complaints based?

Mr O'SHEA: Obviously we receive something in the vicinity of 25,000 complaints a year.

Mr DAVID SHOEBRIDGE: So you are largely chasing those complaints; that is the bulk of your work?

Mr O'SHEA: No, we also have a very strong audit and proactive compliance as well that does four national audits a year and I think 12 State-based audits a year.

Mr DAVID SHOEBRIDGE: Perhaps you could give us a breakdown—if you could do it now that would be great but otherwise on notice—

Mr O'SHEA: I do not have it with them.

Mr DAVID SHOEBRIDGE: —of what proportion of your workforce is based upon the complaints-based model and what proportion is proactively getting out there and doing audits?

Mr O'SHEA: Sure.

Mr DAVID SHOEBRIDGE: Would you know off the top of your head what the proportions would be?

Mr O'SHEA: I could give you a guess. I would not know off the top of my head.

Mr DAVID SHOEBRIDGE: Do not guess, give it on notice. I am not interested in a guess. You see, there is a fundamental problem if you are trying to deal with people who are trafficked or in slavery conditions if you have a complaints-based regulator because they are frightened, they are disempowered and they are scared to call. Do you recognise that as a fundamental problem in trying to deal with slavery using a complaints-based model?

Mr O'SHEA: I would prefer not to comment on the slavery because we are not trying, I guess, within our jurisdiction to combat slavery but we are trying to help the problem through—

Mr DAVID SHOEBRIDGE: But if someone is a slave and they are not getting paid, they are not going to contact you. Do you see the problem because they are not going to access a complaints-based model and a slave not being paid is an industrial problem as well as a legal problem?

Mr O'SHEA: Indeed.

Mr DAVID SHOEBRIDGE: So do you see the problem? That is why you are not seeing it, because they are not calling you because they won't?

Mr O'SHEA: Yes. So we are on the public record as saying that one of the key barriers to assisting vulnerable migrant workers is them contacting us.

Mr DAVID SHOEBRIDGE: They are not going to.

Mr O'SHEA: So what we have recently done is created an assurance protocol with the Department of Immigration where if people do contact us and they have also breached their visa, they will be given assurances they will not be deported. We are also actively translating all of our website into 30 languages to make sure that that information is as available as possible.

Mr DAVID SHOEBRIDGE: But do you not see that the problem is not putting your information in Vietnamese on a website for the Australian Government; the trafficked migrant worker is not going to be looking there. You have to have people on the ground engaging with this issue and some agency which has responsibility for it. You are clearly saying you are not taking that responsibility and you are not doing that?

Mr O'SHEA: What I am saying is that we do not have that criminal jurisdiction to investigate enforced slavery.

Mr DAVID SHOEBRIDGE: Well, when we ask the police in this inquiry they point to you and when we ask you, you point to the police. Do you see the problem?

Mr O'SHEA: I see the problem. I did not read from the AFP's transcript that they point to us. I mean, it is pretty clear that the AFP had jurisdiction over criminal matters like this, I would have thought.

Mr DAVID SHOEBRIDGE: Yes, and do you know how many prosecutions they have done?

Mr O'SHEA: No.

Mr DAVID SHOEBRIDGE: It would be fair to say this side of nothing. You obviously have a capacity to be out in more workplaces than the AFP. Slavery happens in workplaces. Why should you not step up and take on responsibility, given you are going to be far more likely to be seeing the evidence than the AFP?

Mr O'SHEA: We do take responsibility, as I think I said—

Mr DAVID SHOEBRIDGE: Four referrals?

Mr O'SHEA: Yes. So that is what we have seen and that is what we have referred.

Mr DAVID SHOEBRIDGE: I find it hard to believe that you genuinely have a footprint out there in workplaces given the extent of the problem that has been raised in submissions to this inquiry. I find it difficult to believe you have a genuine footprint and you are actually out there looking, with four referrals? You could just go down to Griffith, you could just go into the fruit picking industry and you could find vastly more than four referrals about slavery-like conditions. I see you are nodding. You agree with that?

Mr O'SHEA: No. Well, there was not a question, so do I agree with whether or not you could go down—

Mr DAVID SHOEBRIDGE: You could just go down and look in the fruit-picking industry and find vastly more than four instances of slavery-like conditions where people have been grossly exploited; and yet you are not there and you are not doing it. What is the problem?

Mr O'SHEA: Because our remit under the Fair Work Act is not that jurisdiction.

Mr DAVID SHOEBRIDGE: So where do the four referrals come from?

Mr O'SHEA: The four referrals come, as I said earlier—

Mr DAVID SHOEBRIDGE: Do you have to see someone in chains before you refer?

Mr O'SHEA: No.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: What are the four referrals all about? What triggers a referral?

Mr O'SHEA: We distribute to all of our Fair Work inspectors, who are in the field, the Australian Federal Police [AFP] indicators of slavery documents. We also run refresher training and we have partnered with Anti Slavery Australia to educate our inspectors about the indicators of slavery.

Mr DAVID SHOEBRIDGE: What proportion of your inspectors have been trained in that?

Mr O'SHEA: I will take that on notice. I am not sure. "Most" is the answer, but I will take it on notice. Armed with that information, when they are in a workplace within their own jurisdiction, which is a workplace relations matter, and if they see something that they think fits those indicators, they refer it.

Mr DAVID SHOEBRIDGE: What are the indicators?

Mr O'SHEA: They are on the AFP's indicator list. I do not have it with me.

The CHAIR: If we can just move on, under "Australia's response to human trafficking and slavery", page 2 of 14 states:

Australia's strategy is guided by the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan).

It seems that what Mr Shoebridge is saying and what I see from the evidence we have is that there are lots of team members addressing these issues, but they have no team leader. It does not seem to be any team leader on this stuff. There are lots of good people doing lots of work but—

Mr O'SHEA: I am sorry, I am not sure what your question is.

Mr DAVID SHOEBRIDGE: Should there not be a leader?

The CHAIR: The question is: Is there any connectivity to the New South Wales Government? Surely the Government must have someone that makes these connections.

Mr O'SHEA: Yes.

The CHAIR: Or is someone needed, like an anti-slavery commissioner in every State?

Mr O'SHEA: I think there is a Federal Government inquiry looking into that very question.

The CHAIR: Well, we cannot wait for them.

Mr O'SHEA: There is an interdepartmental committee on human trafficking and slavery. It comprises Michael Keenan, the Minister for Justice; Julie Bishop, the Minister for Foreign Affairs—

The CHAIR: But that is Federal.

Mr O'SHEA: Yes.

The CHAIR: Their inquiry is following this inquiry.

Mr O'SHEA: No. What I am talking about is the interdepartmental committee, which includes five or six Ministers and probably an equal number of departments and agencies. We are one of them. If you like, that body is the leader.

The CHAIR: But that is national.

Mr O'SHEA: That is right.

The CHAIR: But where is the connectivity to New South Wales? We heard some statistics from the previous witnesses about how many businesses are in New South Wales in terms of the top line and that 33 per cent of the national GDP is from New South Wales and 41 per cent of the top businesses are in New South Wales. We have all this incredible economic growth and business and agencies and all these other industries that are growing—some that you have mentioned—that have issues with human trafficking, but it seems that no one person is really over the top of the gig, has the gamut that includes New South Wales on their radar and then takes that to a national level.

We know that the Federal police report to the State police and they do something with the Federal police and we know that there are agencies, such as Anti Slavery Australia, that connect a few dots; but there is no one person who seems to be the team leader in New South Wales and connects with the Federal level or the National Action Plan.

Mr O'SHEA: With respect, sir, we are the Federal Government so we administer Federal laws and have that jurisdiction. If what you are saying is: Could the interdepartmental committee on human trafficking and slavery benefit from a State-by-State analysis or representative, to use your term? The answer to that is "possibly". The interdepartmental committee does look at Federal issues. It is a Federal body.

The CHAIR: I understand that.

Mr O'SHEA: If your question is—and I do not mean to put words in your mouth—could that body benefit from engaging with each and every State government and Territory, the answer to that is "possibly". There may be other Federal Government agencies who know more about that. It may be that the AFP utilises information from local police forces. I am not sure.

Mr DAVID SHOEBRIDGE: In the course of human history, has anybody ever been freed from slavery by an interdepartmental committee?

Mr O'SHEA: I am not sure.

Mr DAVID SHOEBRIDGE: It is just not how you save people from slavery.

The Hon. Dr PETER PHELPS: There was a war in the United States. I am not sure we need to go to that extent. To the point of the role of the Fair Work Ombudsman, an ombudsman by its very nature is reliant to a large extent upon complaints. That is what you are there for. An ombudsman receives complaints in relation to a whole range of matters, whether that is a Fair Work Ombudsman or any other ombudsman. That is the nature of their role, surely, to essentially be complaint based. Is that not correct?

Mr O'SHEA: Where are you drawing your definition of "ombudsman" from?

The Hon. Dr PETER PHELPS: For the NSW Ombudsman, the Fair Work Ombudsman, as you have said in your testimony, essentially it is your role—or an ombudsman's role is to receive complaints and to get rectification of issues without having to go through a formalised legal process.

Mr O'SHEA: That may be your understanding of an ombudsman. Our jurisdiction is pretty clear. Section 682 of the Fair Work Act sets out what we do. I guess our name is by the bye. Our remit comes from legislation, not from, I guess, society's view of what an ombudsman should do. That Act says that we are required to be both proactive and reactive and also have to have both a compliance and an educative focus. We do take many, many matters—probably more than any other agency our size federally—to court and see them through that way.

The Hon. Dr PETER PHELPS: Is there a problem that we face in a ratcheting up of hyperbole in our language in that a failure to provide appropriate industrial commission conditions is suddenly seen as slavery. Is there a danger that we are getting too close to hyperbole?

Mr O'SHEA: I think that is a really interesting question. I think there is a danger in referring to everybody who is exploited, even in a very extreme case from a workplace relations point of view, as a slave. We had a very important matter taken before the Federal Court last week, GPS Group Services, where the judge commented, This is the worst case of slavery I have seen. I was not intimately familiar with that case, but knowing that I was appearing here I quickly scrambled to read the submissions and the statements of claim and also the decision. By no means am I passing judgement on the judge—I want to make that really clear—but we did not see forced labour or slavery as an element there. It could be that that was more a turn of phrase used. Then that gets picked up in the media as a case of slavery. Of course these people were very, very badly treated, but it probably did not fit the definition of slavery.

The Hon. Dr PETER PHELPS: In relation to the actual terms of reference for this inquiry, human trafficking in New South Wales—but, more broadly, human trafficking in Australia—do you have any evidence or analysis of which particular industries are engaging not so much in illicit work practices but the actual importation of people into Australia for the purposes of exploiting them?

Mr O'SHEA: From my own experience, the industries where we see such extreme exploitation are probably in the agricultural industry. Now, I am not making that link to slavery because I do not investigate slavery.

The Hon. Dr PETER PHELPS: But this is foreign workers being brought in specifically for work in unfair conditions.

Mr O'SHEA: I would suggest that, off the top of my head, if you are asking for an industry, the agriculture and horticulture industries are industries where we see a multitude of factors adding up: that is, uneducated employers, a complex workplace relations system, remote work, environments that acquire accommodation and, I guess, a degree of reliance on the employer, low-skilled work, and a migrant community—those factors.

The Hon. Dr PETER PHELPS: Also, if I might add, extremely small margins on agricultural products.

Mr O'SHEA: And the introduction of labour hire firms. You throw all of them into the mix and you have a fertile ground for an exploitive arrangement; whether or not that crosses into slavery depends on other factors.

The Hon. Dr PETER PHELPS: That is okay. It would be better if we forgot about slavery for the time being and focused on trafficking. One of the major arguments put forward in this inquiry has been that sex workers are the key problem group in respect of human trafficking, but what you present certainly correlates with my view, that agricultural industries are far more likely to bring people into a country for the purposes of deliberately underpaying them and keeping them in less than award conditions. Why do you think that is? I have listened to the factors, that but those factors would also apply to Australian workers. You would still have the remoteness, the relatively unskilled level of employer interaction, the same conditions for undertaking the physical labour. Why do you think that they particularly choose to bring people in for those purposes?

Mr O'SHEA: I know Joanna Howe from the University of Adelaide is leading some of the work here. I am not sure if she has been invited to appear before the Committee, but she is a great source of knowledge in respect of migrant workers in Australia. One of the issues faced in that industry is that local people are difficult to find to do the work.

The Hon. Dr PETER PHELPS: They would not be employed at a wage level that would meet Australian conditions.

Mr O'SHEA: They would need to be, but—

The Hon. Dr PETER PHELPS: But the argument, surely, is that these people have been brought in so they can be paid sub-award wages?

Mr O'SHEA: We definitely have seen that. We have seen cases of extreme exploitation and underpayment in the agricultural and horticultural industries.

The Hon. Dr PETER PHELPS: Do you have a demographic breakdown of where these workers are most likely to come from?

Mr O'SHEA: We may. We may be able to cut our data that way.

The Hon. Dr PETER PHELPS: Are we talking about New Zealanders, Filipinos, Indonesians, Indians, Bangladeshis, Africans?

Mr O'SHEA: We would have data on the nationalities of some visa holders.

The Hon. Dr PETER PHELPS: Would you be able to provide that on notice?

Mr O'SHEA: If it is available, I would be happy to.

Mr DAVID SHOEBRIDGE: You took issue, as I understand it, with Justice Katzmann's characterisation of delivery in the Grouped Property Services decision, is that right?

Mr O'SHEA: My own opinion is not that it had slavery.

Mr DAVID SHOEBRIDGE: Can you explain why the first sentence of the media release put out by the Fair Work Ombudsman reads as follows:

The Fair Work Ombudsman has secured near-record penalties of \$447,300 against the operators of a Sydney-based cleaning company, with the Federal Court finding the company treated vulnerable employees as "slaves" under a "calculated" scheme.

That is a media release.

Mr O'SHEA: That is what the Federal Court decision said.

Mr DAVID SHOEBRIDGE: The organisation is not taking issue with it. You are highlighting it in the first sentence of your media release. Was it slavery or not?

Mr O'SHEA: I looked at this just yesterday for the purposes of coming here. The reason I looked into it is because I wanted to see if there was a view from us that it included slavery-like conditions whether or not we had referred it to the AFP, because that is our protocol, and we had not, and I asked why. When we looked at the factors we did not think that it fitted the indicators.

Mr DAVID SHOEBRIDGE: How do you put a media release out highlighting the fact that the judge said that the company treated employees as slaves under a calculated scheme? You say one thing to the media and another thing to this Committee.

Mr O'SHEA: Yes.

Mr DAVID SHOEBRIDGE: How do you explain that? It seems like poor practice from a Federal agency to say one thing to the media and then say another thing to us at this Committee?

Mr O'SHEA: The media release is quoting the judge.

Mr DAVID SHOEBRIDGE: I can read the whole thing. At no point does the Ombudsman take issue in its media release with the judge's characterisation? But you trot along to this Committee and say the opposite. I think that is poor practice and I am going to give you an opportunity to explain it.

Mr O'SHEA: Sure. The explanation is that the decision comes down, the media release is written and it uses quotes from the decision. I have explained already that once I read that, I wanted to see whether or not we had referred it to the AFP to ensure that our protocols had been met. When I found out that we had not referred it to the AFP, I inquired as to why, and it is because it did not fit the indicators.

Mr DAVID SHOEBRIDGE: Those indicators I asked you about that you said you could not provide to the Committee?

Mr O'SHEA: They are the ones I said I did not have with me.

Mr DAVID SHOEBRIDGE: Perhaps you could provide on notice a rationale why your media release, which suggests that it was slavery under a calculated scheme, was wrong and how your assessment of those indicators says it is not slavery?

Mr O'SHEA: I am happy to.

Mr DAVID SHOEBRIDGE: At the moment, I am deeply confused with your agency's approach to this.

Mr O'SHEA: I am happy to provide that on notice and I think it will be clarified.

The CHAIR: Thank you for your attendance to give evidence and your submission; it has been very helpful. You have 21 days to answer questions on notice.

Mr O'SHEA: I am not familiar with committee practices in New South Wales. Will correspondence come to me indicating what is required?

The CHAIR: I was about to say that. The secretariat will help you. You talked about tabling a document with those indicators when you get a copy.

Mr O'SHEA: That is the AFP's document. If we have a copy that is available, I am happy to table it. Alternatively, the AFP will, I am sure.

The CHAIR: Thank you.

The Hon. Dr PETER PHELPS: Thank you. Keep up the good work.

(The witness withdrew)

(Short adjournment)

HEATHER MOORE, National Policy and Advocacy Coordinator, Salvation Army, affirmed and examined

LAURA VIDAL, National Projects Coordinator, Salvation Army, on former affirmation

The CHAIR: Would either of you like to make an opening statement?

Ms MOORE: We do. We both have prepared a bit of a statement for you. First, thank you very much for the opportunity and privilege of speaking with all of you today. I offer my hearty congratulations to you for the courage and leadership that is required to get these kinds of inquiries up and off the ground. Collectively our team in Australia has over 35 years of experience working in the sector in the United States and Australia as supported accommodation providers, caseworkers, community organisers, trainers, policy advocates and research consultants.

Our team has provided professional consultation to the International Labour Organization, the United States state department and the United Nations Office on Drugs and Crime in countries as diverse as Myanmar, Jordan and Fiji, to name a few. The Freedom Partnership supports people who experience human trafficking, slavery and forced marriage by operating the only refuge in Australia for women and through outreach case management services to men, women, young people and families living in the community. In addition to our direct service work we raise general awareness of trafficking in slavery by providing education, training and capacity building to community and government agencies.

The Freedom Partnership has developed the country's only survivor advocates program—the Freedom Advocates—which utilises a framework for ethical engagement of survivors so that they can contribute directly to the social change and public discourse on this issue. We also chair an initiative called the Australian Freedom Network, which is a collaboration of 18 faiths across Australia. I now would like to acknowledge the forced labour, servitude and enslavement of Aboriginal and Torres Strait Islander peoples and Pacific island peoples in Australia's history and note the trauma and impact those injustices have had on individuals and their families and communities.

In our view, one of the greatest—perhaps the greatest—outcome that we could achieve in this inquiry is to propel the States and Territories into action and to inform a picture not only of what New South Wales can and should be doing to address trafficking but what all States and Territories can and should be doing. We have a very strong foundation in Australia to fight this crime but it remains highly federalised and highly centralised. Unfortunately, the consequences of that have been low awareness among key responders and the public and, consequently, low victim identification and low numbers of prosecutions.

A truly effective national response requires leadership from all levels of government—Commonwealth, State and local governments—working together and with community and with civil society to identify and address gaps, calibrate the right policy settings and to establish and resource frameworks at the local level to operationalise those policies. Speaking from my own experience. I started in this work in 2003 when I founded a shelter for trafficked women in Los Angeles. In the United States [US], as in many, many other countries, the development of the anti-trafficking response started with a huge case that came to light and put this issue on people's radars. The Federal Government responded by criminalising contemporary forms of slavery.

In the US over time the Federal Government ended up funding over 40 task forces in urban and regional areas across the nation and a similar number of States actually passed their own State legislation to build upon the national framework, to fill some gaps, and to also contribute State resources to the issue. A few short years later we realised that the federalised response just was not enough and that is really what prompted the creation of those task forces. People needed to be working together at the local level to tailor the national response to local trends. In my own state of California, two laws were passed, one of which mandated a year-long advisory task force, which is much like what was recommended in the last New South Wales inquiry, to conduct a thorough needs assessment, look at what was working, and look at what was not working. Findings included lack of data in the State of California, lack of awareness, lack of coordination among State agencies, lack of funding for victims' services and shelter, and many other things.

Like in the US and other countries, strengthening and formalising the role of the States and local governments as well is the next logical iteration in Australia's response to contemporary forms of slavery. We have made a range of recommendations to address the various terms of reference for this inquiry but I would like to focus on three today: Firstly, that New South Wales should appoint a State coordinator on trafficking and slavery; secondly, that they should establish a State advisory council under the direction of that State coordinator to compile information gathered in this and previous inquiries and to conduct any further needs analysis; to develop a State action plan on trafficking and slavery that is aligned with the National Action Plan;

and, finally, that New South Wales should, through this committee or this advisory council, work simultaneously with the Commonwealth to further iterate the role of States in the National Action Plan, not as passive recipients of the National Action Plan but as key stakeholders at the table, bringing to bear the full resources of the State. I will now hand over to Laura Vidal for a statement that goes into some specific examples regarding forced marriage and how the State can improve its response. Thank you.

Ms VIDAL: Thank you for the opportunity to address you today. Early enforced marriage is a distinct opportunity in which New South Wales can play a key role in intervening in the trafficking and slavery framework. Early enforced marriage is defined as a slavery offence in the Commonwealth Criminal Code. It involves a marriage that is entered into without free and full consent. It is also an area that presents a new demographic of trafficking in Australia. Australia previously has been understood as a destination country but what we see in the dynamic of early enforced marriage is residents and citizens of Australia being taken overseas for the purpose of entering into a marriage. When it involves a minor it could very well fulfil the definition of child trafficking.

The New South Wales Government has taken steps to address and respond to early enforced marriage and those steps include the Child not Bride campaign, the recognition of early enforced marriage as risk of harm under the child protection framework; and the establishment of the joint Commonwealth and State working group. Efforts to raise awareness and educate communities no doubt has resulted in a significant rise in referrals to law enforcement, Family and Community Services [FACS], and community organisations alike. However, there remain critical gaps in victim response. A great deal of work remains to be done to ensure holistic and comprehensive support options for individuals. We are encouraged by the initiatives of New South Wales to look at addressing early enforced marriage. However, there has been limited operational change in agency practice and resources since these initiatives came to fruition. We are particularly concerned about individuals who are aged between 15 and 21 who, in our experience, require specialised and long-term support.

In short, there is a lack of clarity and operational framework for responding to agencies, which has put some young people at greater risk. Two recent examples, if I may, involve one young person learning of her parents' intentions to force her into a marriage. She left home with nowhere to go. She got on the bus after school and just kept going until the end of that bus line. It was her hope to be able to find a local police station to seek safety and support, but she was not able to do that. She had lived in a very closed environment and was not able to find that, so she bravely knocked on the door of a stranger and asked them to help her find NSW Police. When she did that, she was taken to NSW Police, who were not able to help her that evening. They returned her to that stranger's place to spend the night before the Australian Federal Police were able to respond the following day.

In another incident, a young person disclosed to her school that her family was arranging a marriage for her before she turned 18. She was clear that she did not want this marriage and had made that known to her family. The prospective husband had arranged to pay a significant dowry and her family exercised control through physical and psychological violence. Upon our first meeting with this young person, she was unprepared to make a decision about engaging with law enforcement, so a mandatory report was made to the Department of Family and Community Services. The department did not ever engage with this young person. Further, when her circumstances changed and we assessed her risk to be increased, we made a follow-up mandatory report and received a letter that stated that the report did not meet a risk of significant harm threshold.

Those two examples illustrate that first responders in New South Wales are not equipped to effectively respond to individuals at risk. It also illustrates how these State agencies are very well positioned to respond and form a necessary part of protection. Early enforced marriage intersects with various other complex social issues, including family violence, child protection and homelessness—all issues that within the State of New South Wales we have very clear, strong and coordinated responses to. We seek to see that early enforced marriage is recognised for its intersections and is included across a range of intervention points. Firstly and in particular, the provisions for accommodation and supports under the Support for Trafficked People program commonly employ hotels, mainstream homelessness services—including those in New South Wales—and shared house rental properties. Those forms of accommodation generally are not appropriate for young people at risk and, in our experience, they do not provide the necessary safety and support for this client group.

Secondly, under the current framework individuals are required to engage with Federal law enforcement in order to access support. We argue that intervention should be led from a child rights framework, which suggests that child protection professionals and frameworks should be at the centre of coordinating care and protection, rather than being led by a law enforcement agenda. As alluded to above, a coordinated response by Federal and State agencies is problematic. Despite efforts to raise awareness over many years, many State

responders remain unaware of the roles and responsibilities in responding. This places undue burden on women and girls to navigate complex systems with limited or no support.

There is a distinct opportunity for New South Wales to lead the way in broadening Australia's approach to early and forced marriage, including supporting non-legislative measures such as provision of supported accommodation regardless of an individual's willingness or capacity to engage with the criminal justice process, establishing clear response protocols between State and Federal agencies, including the frontline service provider training and raising awareness in States, and considering a role for families and community services to lead, care and support for individuals at risk, which includes adequate resourcing of this department.

The CHAIR: You put forward an amazing submission with lots of recommendations. Hopefully the inquiry will end up with some of these recommendations. At the initiation of the inquiry it was obvious, after being around different agencies and organisations and hearing evidence, that there is no connectivity with the Feds. Everyone is running around doing lots of good stuff, but there is no one person able to make that connection to bring it altogether. Is that basically what you are saying? Would that be fair? I need it on record if that is what it is because I would like to think we could do something about that.

Ms MOORE: Yes, I think more coordination would be an important step forward to meet our potential. As you have rightly pointed out, there are a lot of good things going on, but the reason that we argue for a more localised approach is, first, it is rightly criminalised at the Federal level—it is a very serious, serious crime—but you cannot fight it with just Federal Police. I know this from my own experience. You have to engage people in the community. In a lot of situations in indirect service work, which is my background, it was a good Samaritan that helped, it was the neighbour next door, and that is true here as well. We have worked with those people. One client in particular was being held in domestic servitude and she said that the only reason that she was able to leave was because the woman next door was willing to help her. We need to move away from this notion that it is just Government, it is just law enforcement. This is similar to domestic violence. It needs to become a part of the social consciousness of Australians so that we can all work together to address it.

The CHAIR: The second part, which I see a lot in your evidence—once again reflecting on other evidence and then reflecting on a recent trip to the United States—we must come back to the first pillar being victim-centred. It seems that there is a lack of resources for that to happen. Would that be a fair comment?

Ms VIDAL: I would agree with that comment. As you said, the approach that we have currently is federalised and it requires an individual to engage with that Federal legal system in order to access support. By the framework being federalised, it also means that the identification does not filter down to those layers of community that Heather was just referring to. It is not going to be the Federal Police who identify a case of trafficking. It will be the person next door, it will be local police, and the people in our communities need to be equipped to be able to respond.

The CHAIR: I know there was an indication that when we remove someone from a situation, to be victim-centred first is whether there should be an opportunity for that victim to have access to the victim's compensation scheme to help them to function and get back on their feet. Do you have a comment about that?

Ms VIDAL: Typically we are able to access compensation in the State of New South Wales for State-based offences. Generally speaking, a lot of the trafficking and slavery scenarios that we have seen include State-based offences, at least physical abuse or sexual abuse, or something similar, so we can access that. The challenge is that the actual act of slavery and trafficking has a magnitude beyond some of those offences that people are not able to have recognised, and so the compensation that they would otherwise be eligible for in a national scheme, for example, is not there.

Ms MOORE: I will add a quick comment on that. There is a lot of rhetoric about a victim-centred approach, but when we drill down what does it look like? Some of the things we speak to in the submission are issues that arise much earlier in the piece, before a person would become eligible for compensation. We are actually suggesting that we are not even identifying people because we are not exercising a victim-centred approach. A couple of examples to illustrate this point is around the influence of migration policy on anti-trafficking policy where we are putting immigration priorities before protection priorities. I am not suggesting that we open up the gates and assume everyone is a victim, that is not in anyone's best interest—certainly service providers; we cannot help everyone who claims to be a victim. Very few people say, "I am a trafficking victim." It is the opposite case; people rarely identify themselves as victims.

It is incumbent on the system to take a step back and know the indicators and to slow the whole process down. The United Kingdom Independent Anti-Slavery Commissioner spoke to this in his recent visit to Australia, knowing what the indicators are and shifting that person away from a removal pathway to a protective pathway, bringing in civil society earlier through early engagement and screening rather than waiting until after

the police have decided, "Yes, this person is a victim." In many cases, and the international literature supports this, many victims do not trust law enforcement. They will not disclose their circumstances to law enforcement, but they will to an independent legal service provider or a victim service provider. There are those two elements of questioning how we are managing our priorities, but also more effectively utilising the skill set of civil society to build the trust and rapport to encourage victims to cooperate with the criminal justice system.

The Hon. SHAOQUETT MOSELMANE: Thank you for coming in and providing an excellent submission. Ms Moore, you indicated in your opening statement that with freedom advocates 18 faiths are involved. Can you tell us if that includes Islamic, Hindu, Judaism? Any others?

Ms VIDAL: The Australian Freedom Network was formed two years ago on the back of the Pope's commitment to end modern slavery. Those 18 faith leaders have signed a declaration and a commitment to embed that into their work, so they represent all of those groups that you stated, but it also includes Buddhism, and various denominations of the Christian faith, as well as both sects of Islam, Judaism, Hinduism, and so on.

The Hon. SHAOQUETT MOSELMANE: Do you find that local community groups and religious groups are participating in your push for a commission or an inquiry, or as you suggested in one of the recommendations, that the New South Wales Government call on the Federal Government to establish a high-level structure of State and Territory governments to tackle human trafficking?

Ms MOORE: At the community level, the membership level or parishioner level, some faiths have more active members. The Uniting Church is a good example. It is more than just their leadership. They have people across the country who are well and truly active in this space. I think you can say the same for the Catholics, particularly through the NGO Australian Catholic Religious Against Trafficking in Humans who have appeared before this Committee as well. That is really the idea behind the freedom network, to get the leadership of the respective faiths and channel that down throughout their members.

The Hon. SHAOQUETT MOSELMANE: I am curious about those three faiths, Islamic, Hindu and Judaism. How actively are they involved in this push?

Ms VIDAL: All of the faith leaders came together and submitted a submission for the Modern Slavery Act inquiry that is occurring at the moment, and they all endorsed the recommendations around having an anti-slavery commissioner working with business. The network is very new, it has really only been operational for 18 months, so each faith group is on their own pathway to addressing those issues. Some are more ahead because of their membership base than others, but they have all made the same commitment and we are just working and partnering with them to see what that looks like in their particular expression.

The Hon. SHAOQUETT MOSELMANE: I have not seen the submissions but are they available to you?

Ms VIDAL: That is available publicly online through the Modern Slavery Act inquiry.

The Hon. SHAOQUETT MOSELMANE: The Senate inquiry?

Ms VIDAL: It is a joint inquiry.

The CHAIR: The honourable member is stepping in for one of his colleagues, so he has not been along for the ride.

Dr MEHREEN FARUQI: Thank you once again for coming here and for your excellent submission. I must say it was well researched. You gave two examples which were concerning, especially the one regarding how police dealt with the situation. Have you analysed it further and looked into what happened? Was there not accommodation for that child, or how can that happen? What more training could you give police to let them know this was totally the wrong direction to go?

Ms VIDAL: I think there is probably a couple of different parts to that answer, if you do not mind. One is that there was no accommodation available for this young person, which speaks to the larger problem that we have around the availability of emergency accommodation. The second part speaks to the lack of awareness within local police about appropriately identifying and understanding the very specific safety concerns that are involved in these sorts of scenarios. I ask myself the question around why the 24-hour help line with Family and Community Services [FACS] was not engaged, she was a young person under the age of 18, and I do not have an answer to that. We have had engagement with one local police station on multiple occasions where that response has been less than adequate.

We have raised that concern with our Federal Police colleagues who are seeking to engage with that particular local area command around their capacity building. But I think it speaks to that larger picture of it is not in their mandate, it is not written into local or State legislation, so identifying it for what it is and ensuring

the appropriate response flows on is problematic in that regard. What we would like to see recommended, as I said, is also the intersection of that issue with these various other frameworks because I wonder that if, for example, it was seen within the light of family violence whether or not that would have been the action that was taken from there. Because my experience of the family violence sector is that that would not have been the response from local police when that person comes forward identifying that their home situation is not safe for them.

Dr MEHREEN FARUQI: Is that changing in any way, shape or form?

Ms VIDAL: In terms of local police?

Dr MEHREEN FARUQI: Yes.

Ms VIDAL: There are patches. Sometimes it depends who is on the desk when you get there, or who answers the phone when you call.

Dr MEHREEN FARUQI: What do you recommend for it to be changed?

Ms VIDAL: I think we need mainstream mandatory training right across the board for all NSW Police members.

Ms MOORE: This is true of all forms of trafficking and slavery. What historically has been the case, the response is, we have identified an isolated issue and we are going to roll out some training. But it is in isolation and it tends to happen from the top down. Recently the Attorney General's Department, I think they are still in the process of doing a training on forced marriage across the country in all capital cities. And while that is great and we absolutely support that and have not been involved in those, as hopefully you have discerned from our submission, our recommendations are about establishing structures through which to run long-term strategies. A one-off training in capital cities is not sufficient. You need to embed this into training. Child protection; we want a consistent approach across child protective authorities in Australia and right now there is none. What is happening in New South Wales is actually quite different from what is happening in the Australian Capital Territory, where I live, as opposed to Western Australia, and so on.

The same thing with health professionals. In my own experience in the United States we assisted a woman who went to the emergency room and her traffickers were allowed to be her interpreters. She spent another year in her situation, where she could have been helped to escape. These are just examples of why we do not just need isolated training. We need a localised framework that includes a range of State governments, and frankly appropriate local governments and civil society, to be working together to drive long-term strategies around awareness raising and developing response protocols.

Dr MEHREEN FARUQI: One of your recommendations mentions forced marriage protection orders which you say are in place in the United Kingdom. Could you elaborate on those, what are they?

Ms VIDAL: Forced marriage protection orders are similar to a domestic violence protection order but they have specific provisions related to the unique dynamic of forced marriage. Currently in Australia only people under the age of 18 can get a Federal Court order to stop them from being able to leave Australia. What a forced marriage protection order does is puts a Federal Court order in place to stop travel at any age regardless. Because it recognises that when you turn 18 something magic does not just happen, you are still very much vulnerable and often very influenced and pressured by the other family or community structures.

The primary benefit of the forced marriage protection order is that you can seek an order from the court that does not allow you to travel. If you are currently put on an airport alert system with the Federal Police and you are over the age of 18 there is nothing that legally stops you from being able to leave the country. They can be alerted at the airport. They can ask you do you want to travel. And at that point—while your family is all there waiting to board a plane—what do you say? Those orders actually seek to put a full travel restriction in place, which is what we see as a primary benefit of that order at this point in time. The other provisions mirror other family violence order provisions which all have great benefit as well.

Dr MEHREEN FARUQI: And they have been successfully used in the UK?

Ms VIDAL: Absolutely, yes.

Dr MEHREEN FARUQI: You mentioned earlier you do work with FACS in their program on preventing child marriages. What is the nature of that work?

Ms VIDAL: I guess our work with them is really around the casework that we see and across FACS as a whole we have mixed responses, depending on which office it is allocated to and so on, and their experience with the issue. Overall the child protection system in Australia has a very specific framework which was

designed for a very different demographic of young people. The young people that we see are generally almost ageing out of the child protection framework, so they might be over the age of 16 and there is a great deal of hesitation to remove a person over the age of 16 from their family.

The other challenge is departmental resources. The priority given to a 17-year-old over somebody under five when there is such a volume of reporting to the department becomes problematic. What we would see to be an effective method of intervention is that there is a specialised child protection response in relation to early and forced marriage. It goes back to the UK again, who in our understanding with the forced marriage unit, that is a dedicated multidisciplinary team. It does have child protection links and representatives that are all part of a coordinated approach to that. It is not embedded into the existing volume of other children and young people at risk.

Dr MEHREEN FARUQI: That would not require resources to make it successful.

Ms VIDAL: Absolutely, yes.

Dr MEHREEN FARUQI: On the broader aspect of human trafficking, it is apparent from your submission there is a lack of information about different forms of trafficking. Did you suggest earlier that the State level coordinator on human trafficking would have that role to look at the data and do more research as well? I remember the issue of the lack of data to know what is going on was raised in the Community Relations Commission inquiry into the exploitation of people through trafficking.

Ms MOORE: There is a serious lack of data on this issue in Australia. I think it would be fair to say Australia is far behind comparable or similar countries on the quality and substance of its reporting on this issue. It is one of the reasons that I mentioned the taskforce that was created in California. It is not entirely different from what this inquiry is discovering, no doubt, under the term around prevalence of trafficking and slavery. You will have captured a great deal of anecdotal information. I refer to a resource from the United States of America Department of Justice that is basically a guide for developing task forces. The United States task forces are not strictly law enforcement so the Los Angeles taskforce that I participated in had a range of civil society acts as well.

They list out a range of things that should be included in a needs analysis from: looking at booking data from local jails and other correctional institutions; to census data; looking at migration patterns and labour issues; State labour department data which is a very US-centric thing but I think you would have some comparable stuff here in Australia—work, health and safety for instance; geographic indicators; historical cases; media reports and so on and so forth. It is why we are suggesting that a State coordinator work with an advisory council to compile the data from this inquiry, the last inquiry and then identify any further avenues to collect information to develop a pretty accurate picture of what is going on in New South Wales to inform a response. If you do not understand the problem you cannot formulate the right response.

The Hon. Dr PETER PHELPS: Ms Moore, one of the reasons for the establishment of this inquiry was the suspicion that there was a high degree of human trafficking in relation to sex workers in New South Wales. The Fair Work Ombudsman said that agricultural workers are far more likely to be trafficked for sub-optimal conditions or sub-award conditions. What is your experience with the particular industries where trafficking is a problem? Have you done any analysis of that?

Ms MOORE: Yes, and I will share this answer with Laura who has been working in our safe house for a number of years and can speak to the types of industries that we are seeing in our service. Just briefly, it is what Laura said earlier, whatever you look for you will find. The earlier stages of Australia's response gave a picture of a higher rate of sex trafficking because that is where people were looking. I would argue from my own experience that it is also an area that is easier to find because generally victims are exposed to a range of potential sources of help, ironically, including their customers and the people that are facilitating them such as taxi drivers who, in my experience, have actually helped victims escape sex trafficking in the past.

But it is where you direct your focus that you will start to find other things. I think the Fair Work inquiry into the harvest trail campaign and, quite honestly, a lot of advocacy through the national roundtable has been driving a lot more attention by the Fair Work Ombudsman to look at where cases are crossing that threshold from the civil realm into the criminal realm.

Ms VIDAL: Currently in our safe house we have a 50:50 split of demographic represented and that is people trafficked for the purposes of domestic work and forced marriage.

Ms MOORE: To go back to your question around what industries we have seen, we have seen cases in a range of industries; that is just the current representation. But we have seen clients coming out of hospitality, massage work, farm work, construction cases—

The Hon. Dr PETER PHELPS: Cleaning was mentioned earlier.

Ms MOORE: Cleaning, and for further information that is a bit outdated, the Australian Institute of Criminology issued a report on labour trafficking that identified a range of industries, including actually meat processing, food processing, as well as maritime fields such as coastal shipping and what not.

The Hon. GREG DONNELLY: The fishing industry, yes.

Ms MOORE: Fishing industry, exactly.

The Hon. Dr PETER PHELPS: Given the potential penalties for being caught trafficking, why does trafficking remain a problem?

Ms MOORE: Because penalties are only effective if the perceived risk of getting caught is proportionate. I think we have seen this in the 7-Eleven cases, which is a good example where, despite a Federal inquiry and tons of media coverage and pretty good action by the Federal Government on that issue, we still have operators coming out in media reports committing the cash back scam. This is why we speak to the need to create safer pathways for people to come out. If people do not feel that the system is going to serve their interest, if they do not feel like they can safely go to law enforcement without fear of being perceived as a criminal themselves then they are not going to report. The only way to effectively address this is, yes, we need strong penalties but victims also need to be able to safely seek help. If the systems are not there to facilitate that then we have just got one side of the equation being taken care of. There is a whole other side that is basically maintaining the power structure that the trafficker holds over the victim.

I can give you a number of quotes where traffickers have said to our clients: In this country dogs have more rights than you. I am a citizen, you're a migrant, you're temporary, no one will believe you, they'll believe me and they'll just deport you. We do deport a lot of people so they do not have any reason to question what their employer has been telling them.

The Hon. Dr PETER PHELPS: Ms Vidal, in relation to forced marriage, are there any particular religious or demographic groups in which forced marriage is more prevalent?

Ms VIDAL: Yes.

The Hon. Dr PETER PHELPS: What are they?

Ms VIDAL: It would be the Islamic community but I say that again with the qualification that that is where we are looking.

The Hon. Dr PETER PHELPS: Are there other religious communities in Australia where forced marriage is a problem?

Ms VIDAL: Yes, there are but our greatest experience with the issue is that religion is not necessarily a motivating factor. There is a range of other social—

The Hon. Dr PETER PHELPS: Are you saying that culture is more important than religion?

Ms VIDAL: I would not even generalise it to be culture. I would say culture within one family "That is how we do things within this particular family unit". But there are also those other examples where there is benefit or gain, be that migration or financial, there is social control needs or upholding gender expectations. It is a very complex issue that requires a complex analysis to develop a nuance response. We cannot be too simple in our suggestion of what the motivating factors are.

The Hon. Dr PETER PHELPS: But gender expectations do not just come out of thin air, they are on the basis of people who within a particular culture, believe that this is the way that girls should be treated? Is that correct?

Ms VIDAL: I mean we could talk about that in mainstream Australia as well in terms of the rights of women and men. I think that is probably a whole different discussion, maybe not relevant to this inquiry.

The Hon. Dr PETER PHELPS: Are there nominally Christian communities in Australia which engage in forced marriages?

Ms VIDAL: Yes.

The Hon. Dr PETER PHELPS: Will you identify which sects in particular that includes?

Ms VIDAL: In the cases that we have had they have not been specifically identified as a sect of Christianity. It has been an isolated incident of closed Christian communities who have gone off in their own direction around their faith and their organisation of themselves.

The Hon. Dr PETER PHELPS: Apart from the Exclusive Brethren, which other Christian communities would fit that definition?

Ms VIDAL: I could not tell you, to be honest. Our experience with the issue has not been an identification of a particular denomination of Christianity.

Ms MOORE: They have been non-denominational.

The Hon. GREG DONNELLY: Let us be frank here: Isn't the answer that there are none?

Ms VIDAL: No, I do not think that is the answer at all.

The Hon. Dr PETER PHELPS: I think their problem is that they do not record in specific detail which particular aspect of the nominally Christian community the complainant is from.

Ms MOORE: No, I am sorry: What we are saying is that this group did not identify as Anglican or Catholic or one of the said denominations of the Christian faith. This group was a non-denominational group. That is the case in Waco, Texas, 20-plus years ago—the David Koresh issue. I do not know that they actually came out as a specific denomination. They were their own—

The CHAIR: Cult.

Ms MOORE: I think in that situation they were a cult. I am not across the details of this case, so I want to be very clear for the record I am not stating that this was a cult. We are just trying to say explicitly that this was not an identified denomination of Christianity, although they adhere to the basic tenets of Christianity.

Ms VIDAL: Our experience with that case actually led us to feel that more attention needed to be placed in those areas. In addition to the other areas that we are already targeting, we feel like resourcing of the more mainstream or broader education piece would be of value.

The Hon. Dr PETER PHELPS: You mentioned earlier that the Islamic community is one that you are looking at, but that is only because you are looking at it. Is it arguable that the Islamic community contains a wide variety of individual cultural practices—for example, the incidence of forced marriage amongst Albanian Muslims would be significantly smaller than the incidence of forced marriages amongst Afghani Muslims or Pakistani Muslims?

Ms VIDAL: Yes, I would agree with the statement that you made that within the Islamic faith there are a whole range of different individual practices right across the board.

The Hon. Dr PETER PHELPS: And even with the individual groupings—for example, Pakistani Muslims from the north-west frontier communities are far more likely to be traditional and will involve themselves in arranged marriages of under-age children for the sake of either familial or political alliance purposes rather than, for example, a cosmopolitan elite from Islamabad?

Ms VIDAL: I think the international research would indicate that to be true, yes.

The Hon. Dr PETER PHELPS: The issue at hand for arranged marriages is not necessarily one of religion but of cultural practices which are being engaged in by particular members of a cultural grouping.

Ms VIDAL: Yes.

The Hon. Dr PETER PHELPS: Okay, that is fine.

The Hon. SHAOQUETT MOSELMANE: I think the issue is forced marriages, not arranged marriages.

Ms VIDAL: Yes, correct.

The Hon. Dr PETER PHELPS: I am sorry, but an arranged marriage between two 14-year-olds is a forced marriage because you cannot consent at the age of 14.

Dr MEHREEN FARUQI: That is an under-age marriage.

Ms VIDAL: That is correct, but that is an under-age marriage.

The Hon. Dr PETER PHELPS: But it is also a forced marriage, because if we accept that you cannot consent to sex under the age of 16, there is no way you can possibly consent to marriage under the age of 16 in any reasonable circumstance.

Ms VIDAL: Our legislation does state that any marriage entered into under the age of 16 is forced, because it is assumed they cannot give consent. I think the qualifying point is you have got child and forced

marriage, and child marriage is a forced marriage, but forced marriage is really about that element of consent. When we use the words "arranged marriage" we are referring to two adults who can give their consent and enter into that arrangement without difficulty.

The Hon. Dr PETER PHELPS: Looking at the issue of what we can do to prevent these marriages from occurring in the first place, there is a two-track approach. You can make sure that individuals—teenagers and particularly teenage girls—know their rights and have the ability to access services to do that. Do you believe that, particularly in those cultural communities where this has been said to be a problem, there should be a heightened sense of notification for warning signs for teachers and school counsellors and, more importantly, a concerted education campaign for the students of that school about the ability to access services and the fact that they do not have to accept forced marriages?

Ms VIDAL: Yes, I would agree.

The Hon. Dr PETER PHELPS: Would that also include, for example, the establishment of a hotline for FACS that was exclusively dedicated to particular girls in the situation of forced marriages? That would be a hotline and a FACS team that girls and young women—you are right: just because you click over the eighteenth birthday does not make you materially different to what you were at 17 years and 11 months—can access for those who find themselves in the situation of pending forced marriages.

Ms VIDAL: I think the bedding of the hotline within FACS would need some further elaboration because of the child protection framework really not extending to people beyond the age of 18. When you put in place a hotline, you also need to make sure that the services that people need when they are calling that hotline are there as well—

The Hon. Dr PETER PHELPS: Do not worry: We have had this problem before in other inquiries.

Ms VIDAL: It cannot just be a hotline in isolation. I would also just echo that a hotline for victims of trafficking and slavery across the board is required. Given that early and forced marriage is recognised as a form of trafficking and slavery in Australia, I think a dedicated trafficking and slavery hotline that is independent and that allows people to seek that advice and access to services would be closer to our recommendation.

The Hon. Dr PETER PHELPS: Given the reticence of people who might be the subject of trafficking or forced servitude in Australia and people who do not wish to involve the Government in their family affairs, is it appropriate that FACS run this hotline. or is it appropriate that it be contracted out to a non-government organisation?

Ms VIDAL: I would say that it would be contracted out to a non-government organisation where it can maintain independence and also be able to then engage with authorities as necessary.

The CHAIR: It is excellent to finish on that note. Thank you for providing evidence. As I said, your submission is pretty full, and on page 26 it states in bold that "The Committee should examine the extent to which NSW state LEAs"—

Ms MOORE: Law enforcement agencies.

The CHAIR: Can you elaborate on exactly what that means through an answer to a question on notice? Could you also present the two examples Dr Faruqi spoke of as a case study, as that would be really helpful for our report?

Ms VIDAL: Yes.

The CHAIR: Sam and the team will help you with any further questions on notice. You have 21 days to deliver those answers. Thank you for your great commitment to this cause.

(The witnesses withdrew)

The Committee adjourned at 12:57.