

PARTNERSHIPS WITH OVERSEAS 'ORPHANAGES'

Implications of the proposed Modern Slavery Act for Australian Charities

INTRODUCTION

A recently released interim report on Modern Slavery and Global Supply chains indicates it is likely a Modern Slavery Act will be introduced in Australia and that the prevention of 'orphanage tourism' will be included in its scope.¹ This will have implications for a range of Australian organisations and businesses, including Australian charities which currently fund overseas orphanages (or other forms of residential care) and/or facilitate volunteering and voluntourism (including short-term mission trips, or STM) to orphanages.

As such, this briefing note has been written to give Australian charities currently engaging with overseas residential care institutions an overview of the issue and an understanding of some of the potential ramifications of the proposed legislation.

BACKGROUND

In February 2017, Attorney General Senator George Brandis QC requested that the Joint Standing Committee on Foreign Affairs, Defence and Trade launch an inquiry into modern slavery in Australia and to report on establishing a Modern Slavery Act in Australia. The purpose of the proposed act is to eliminate slavery with respect to Australian supply chains.

One of the aspects of slavery and trafficking that the Joint Committee has included in its inquiry scope is 'orphanage trafficking'. Orphanage trafficking is defined as the active recruitment of children from families and communities into residential care institutions (hereby called RCIs) in overseas countries for the purpose of foreign funding and voluntourism.

As Australia is a key donor and volunteer sending country with respect to overseas RCIs, the issue has links to the supply chains of several sectors in Australia, including charities, as well as tourism and faith-based organisations. It is for this reason that it was included in the scope of the inquiry.

DEFINING AN 'ORPHANAGE'

An 'orphanage', for the purposes of this briefing paper, includes all forms of residential care for children, including those referred to as:

- Children's Homes
- Residential Care Centres
- Compound foster care
- Rescue Homes
- Children's Villages
- Institutions
- Shelters
- Boarding Houses (in instances where they operate as RCIs but for educational purposes)

All the above listed types of facilities are classified as residential care institutions (RCIs).

¹. Joint Standing Committee on Foreign Affairs, Defence and Trade, 2017 Modern Slavery and Global Supply Chains, Parliament of the Commonwealth of Australia

EXPLANATION OF ORPHANAGE TRAFFICKING

As with all types of trafficking, orphanage trafficking is driven by demand, which must be met with a ready supply. The demand is for 'orphans in orphanages' who can be marketed to overseas donor communities as 'alone', 'abandoned' and 'in need of care', thus creating a perceived need for funding and volunteers to support the RCIs. However, as the number of orphanages (and amount of available funding for them) well exceeds the legitimate demand for residential care in many countries, children who don't legitimately require care are trafficked into care to meet the deficit in 'supply'.

The traffickers who connect the demand and the supply are those who actively recruit the children from their families and broker their placement into an RCI. These traffickers are sometimes orphanage directors or staff of RCIs, or in other cases they are middle men who scout for children in largely poor and rural communities and receive a fee from the RCIs for each child placed, or receive payment from the children's families to take them to an RCI to access education or other services. The trafficking of children into residential care has therefore emerged as a means for individuals and organisations to profit from the gap between the perceived and actual need for residential care in developing country contexts.

HOW IS DEMAND CREATED?

Companies, charities and NGOs (herein referred to as 'organisations') are producing marketing and promotional materials that are essentially creating the demand. Through promoting stories which perpetuate an 'orphan myth' or 'myth of an orphan crisis', these organisations are appealing to donors and volunteers to help orphans by donating their time and money to RCIs.

In numerous cases, the children's identities have been falsified, either through false documents such as parents' death certificates and, in other cases, in the profiles sent to potential donors. These children are called 'paper orphans'. In reality, it is rare to find an orphan in an orphanage. In fact, 80% of children in care have parents and families who are often erased from the children's stories and lives.

Sometimes organisations don't go to the extreme of producing falsified documents but falsify stories about the children's histories and reasons for entry into residential care in donor communications. This is done to create a perception of need, desperation and dependence on the organisation – once again in pursuit of funding. The most common are false claims of abandonment, orphanhood, claims of being rescued from trafficking or found at significant risk of being trafficked. Where fabricated stories are used to legitimise keeping a child in residential care for the purpose of seeking foreign funding, then exploitation of both child and donor is at play and these children may in fact have been trafficked into the RCI.

THE EXPLOITER AND THE EXPLOITED. WHO IS WHO?

It is important to note that individual donors and volunteers are not the traffickers in this equation, nor do they stand accused of exploiting the children in the residential care institutions they fund or visit. They are largely good people who want to help vulnerable children. Unfortunately, their good intentions and concern for orphaned and vulnerable children are being commodified and exploited by organisations and individuals who have realised that keeping children in residential care is a profitable business, as well as companies which profit from organising voluntourism experiences and placements in residential care institutions. Therefore, whilst the foreign funds and volunteers are fuelling the demand, they are not responsible for creating it.

Unfortunately, their good intentions and concern for orphaned and vulnerable children are being commodified and exploited by individuals and organisations which have realised that keeping children in residential care is a profitable business.

Demand is created in another way too – through keeping children in slave-like conditions in RCIs to elicit the sympathy of foreign visitors and volunteers. There is ample evidence of situations where children have been kept intentionally undernourished and in substandard or dangerous living conditions in RCIs because foreign volunteers witnessing this situation are much more likely to give finances to rectify it. Unfortunately, those funds don't always get used to better the children's lives. Goods donated are often kept locked in cupboards out of the children's reach – and the sights of subsequent volunteers – or sold at local markets to profit the RCI directors. This act of harbouring children in unsafe conditions within RCIs and/or denying them their basic needs and rights for financial gain constitutes modern slavery.

In countries like Cambodia, children themselves are used to stir demand. They are sent into tourist districts to invite tourists to 'orphan shows' at the RCIs where they will dance and sing for donations. They are kept out of school to be available to perform on demand for visitors and volunteers. Needless to say, this practice is highly exploitative and unethical.

HOW ARE AUSTRALIAN CHARITIES INVOLVED IN THIS?

Australian charities which raise funds from individual donors and partner with/fund RCIs overseas can be on either side of the exploiter-exploited equation. In many cases, they are being exploited by their overseas partners and duped into on-telling the falsified stories to their individual donor base to raise money. In other cases, Australian charities are knowingly complicit in creating the false narratives and in doing so are party to the commodification of children.

In some instances, Australian charities' financial viability is tied to having children reside long-term in overseas RCIs. Organisations can fuel orphanage trafficking when they require a minimum number of children to be kept in care to maintain a sufficient level of donations, regardless of whether there are legitimately children in need of the residential services provided.

Using child sponsorship programs to fund RCIs intensifies this risk. Some organisations are aware that children are being recruited to maintain the numbers, however may not have understood that this can equate to trafficking. This is common when the organisation believes there is a legitimate rationale for bringing the child into care – even if it is for reasons other than lack of parental caregivers. Poverty and education are common reasons cited, however poverty alone is not a sufficient reason for children to be institutionalised²; issues such as poverty and education should be addressed within the context of the family and community.

Other charities may have begun funding RCIs overseas with all the right intentions, however, the growing awareness of the harmful effects of residential care on children's development has placed them at a crossroads.

As a result of this increase in knowledge, some charities have responded positively by transforming their overseas programs or shifting their funding to better alternatives. Others have decided not to make a change out of fear that it will result in a significant loss of individual donors (or loss of face), and threaten the viability of their organisation. In this latter scenario, organisational concerns are trumping children's best interests and this constitutes a form of exploitation.

Keeping a child in an RCI for financial reasons with full knowledge that it is not in their best interests can also constitute modern slavery due to the loss of rights, liberty and poor outcomes associated with residential care and a form of economic exploitation.

WHAT WILL THE LEGISLATION AFFECT?

We will not know for sure until it is drafted and passed, however at this point it appears the legislation will primarily focus on banning Australian individuals, organisations and companies from facilitating orphanage tourism.

Such a ban would likely impact:

- Australian tourism providers which include a trip to or volunteering stint in an orphanage as a component of their travel packages.
- Australian volunteer companies which place people in RCIs to volunteer for a given period of time for a fee.
- Australian charities which advertise and organise visits or short-term volunteering stints in overseas orphanages (including short-term mission trips). This could also include child sponsor visits when in the context of an RCI.
- Organisations which facilitate 'orphan tours' to Australia for the purpose of fundraising for an overseas RCI.

It is highly likely that the legislation will be extra-territorial, which means as well as covering the facilitation of orphanage tourism by organisations, companies and individuals operating within Australian borders, it will extend to Australians involved in facilitating orphanage tourism overseas. It cannot however, extend to cover the actions of non-Australian recruiters operating overseas. This must be addressed under the legal framework of those respective countries.

This does not mean that all organisations or companies involved in orphanage tourism are being accused of trafficking or wilful exploitation. Rather the Australian Government is utilising the Australian legal framework to prevent Australia from continuing to drive the demand of this type of slavery and trafficking.

². UN General Assembly, 2010 Guidelines for the Alternative Care for Children.

IMPACT ON SKILLED VOLUNTEERS

Whilst we believe there is no place for orphanage tourism or voluntourists in orphanages (including STM teams), there can be a role for longer-term skilled volunteers who can provide specific technical skills to support RCIs to transition as a part of care reform. Skilled volunteering that does not contribute to care reform in some way will in most cases contribute to the ongoing inappropriate use of RCIs and therefore is a part of the problem not the solution. This is not something we recommend.

Skilled volunteer placements that do contribute to an RCI's transition and care reform more broadly should be able to be facilitated under the structures and guidance of reputable and qualified NGOs which are working with the RCIs for that purpose. Skilled volunteer placements of this nature usually focus on building the capacity of local organisations rather than working directly with children. These things are complex and need to be well coordinated.

IMPACT ON AUSTRALIAN CHARITIES' FUNDING OF OVERSEAS RCIs

At this stage, it appears the legislation will focus on the prevention of orphanage tourism. However, the interim report does recommend that more consideration is given to what measures could be taken to ensure foreign aid, corporate or organisational funding does not directly or indirectly support modern slavery practices. Therefore, with respect to orphanage trafficking, it is feasible that guidance around funding RCIs will be incorporated into the various charity sector regulations and/or strengthened in existing guidelines, and we would welcome this. These measures would likely aim to achieve the following outcomes:

- ensure RCIs under transition can continue receive funding to transition safely;
- allow funding to continue to flow to organisations demonstrating good practice in alternative care (likely based on the UNCRC and UN Guidelines on Alternative Care for Children), as well as those focused on reintegration and care reform efforts; and
- curb the flow of funds to long-term residential care services that are operating contrary to child rights law and frameworks, as well as RCIs which are exploiting or trafficking children.

RECOMMENDATIONS FOR AUSTRALIAN CHARITIES

Until the legislation and other proposed changes are clear, we encourage all Australian charities funding overseas RCIs to conduct a thorough due diligence assessment and ensure that you are not funding an orphanage that is institutionalising children unnecessarily, operating unlawfully, actively recruiting children into care, falsifying children's stories, or is using care as a long-term option contrary to international child rights law. If you discover you are partnering with an overseas RCI that isn't measuring up to good practice, then we encourage you to be the voice that advocates for that RCI to change. ACCI has resources that can help you with this journey and we are happy for you to contact us for support.

If the RCI your charity funds refuses to engage with good practice and change, then we recommend you give them notice of your intention to cease funding. These are usually the RCIs that are profiting from the status quo and that is why they won't change. Where children's best interests are not the central concern there is an increased likelihood that the children are being commodified and both donors and children exploited. Consider if there is a need to report any concerning findings to the relevant overseas authorities and support any subsequent government efforts to ensure the children's safety.

If your charity/organisation is facilitating any form of orphanage tourism (visiting, volunteering, short-term teams) we strongly recommend you make provisions to wind these activities up and look at more ethical options if volunteering remains core to your mandate.

If you are unsure if your promotions and marketing materials are above board, accurate and ethical, then you should verify the facts with your source and refer to the relevant standards in the ACFID Code of Conduct as an Australian aid sector endorsed good practice guide. Be aware of the risk of re-exploiting children through the marketing of traumatic stories.

If you are confident that you are supporting programs that use residential care in a way that is consistent with child rights law (including the UNCRC) and good practice frameworks (UN Guidelines on the Alternative Care for Children), then continue to do so.

If you are working with overseas RCIs as a part of an effort to reform care systems and see children reintegrated back into their families and family and community services developed as more positive alternatives, then you should also feel confident to continue with this important work.

FOR MORE INFORMATION

If you are unsure and want to speak to a professional who can assist you in making a determination, please contact the Australian interagency network ReThink Orphanages at info@rethinkorphanages.org

To read the full interim report in **Modern Slavery and Global Supply Chains** visit [http://www.aph.gov.au/Parliamentary Business/Committees/Joint/Foreign Affairs Defence and Trade/ModernSlavery/Media Releases](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Media_Releases)

For more information on the issues surrounding children's care, visit the following websites:

ACC International Relief's Kinected website – a website dedicated to providing information about alternative care and care reform: kinected.org.au

ReThink Orphanages - an Australian interagency network advocating for Australians to shift the way they engage with children in overseas aid and development: rethinkorphanages.org

Better Care Network - an online resource library for people working with children who lack adequate family care: bettercarenetwork.org

Or to access the submissions to the **Joint Standing Committee's inquiry into establishing a modern slavery act in Australia** visit: [http://www.aph.gov.au/Parliamentary Business/Committees/Joint/Foreign Affairs Defence and Trade/ModernSlavery/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Submissions)



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