



Partnerships with Overseas 'Orphanages'

Implications of the Modern Slavery Act 2018.

Introduction to the Modern Slavery Act

On the 1st of January 2019, the Modern Slavery Act 2018 (Cth) came into effect in Australia, introducing a statutory reporting requirement for large Australian entities or those carrying out operations in Australia, who have a consolidated revenue of at least \$100 million over the 12-month reporting period. Consolidated revenue refers to the revenue of the entity and any entities it owns or controls. The Act applies to both commercial and not for profit entities..

Entities that meet this threshold are referred to as 'reporting entities' and are required to report on how they identify, assess and mitigate risks of modern slavery in their supply chains and operation against mandatory criteria in an annual statement. Statements will be held in a publicly accessible repository to encourage public scrutiny and accountability.

The Modern Slavery Act includes a definition of modern slavery which underpins the reporting requirement. As clarified in the Act's Explanatory Memorandum, orphanage trafficking and exploitation that takes place in overseas institutions (orphanages) is recognised as a form of modern slavery under the Act's definition. As such, reporting entities with orphanages or residential care in their structures, supply chains or operations must assess for risks of modern slavery in these contexts. The Commonwealth Modern Slavery Act Guidance Material includes information on orphanage trafficking and exploitation and specifically identifies orphanage tourism as a risk factor.





Purpose of the Briefing Note

This briefing note was developed by ReThink Orphanages Australia and the ACFID Child Rights Community of Practice to assist entities in Australia and abroad who have orphanages in their supply chains and/or operations understand the implications of Australia's Modern Slavery Act 2018.

Whilst only approximately 3000 large entities will be required to report under the Act, the ripple effect of the legislation is expected to be much wider. It will likely impact smaller entities in Australia and abroad who are part of large entities' supply chains and/or connected to their operations. It is also anticipated that the Act will affect a shift in Australian business culture, incentivising a 'race to the top' as the general public and consumers become more aware of issues of modern slavery and look for responsible and ethical businesses to support. As such smaller companies/entities who are not required to report yet who are involved with overseas orphanages may benefit from this guidance as they seek to keep pace with changing public expectations. It may also assist entities who choose to voluntarily report, as allowed for under the Act.

Background to the Modern Slavery Act

In February 2017, Attorney General Senator George Brandis QC requested the Joint Standing Committee on Foreign Affairs, Defence and Trade to launch an inquiry into modern slavery in Australia and to report on establishing a Modern Slavery Act in Australia.

One of the aspects of slavery and trafficking that the Joint Standing Committee considered in the course of the inquiry was 'orphanage trafficking'. Orphanage trafficking is defined as the recruitment or transfer of children from families and communities into residential care institutions for the purpose of exploitation and profit, including foreign funding and voluntourism.

As Australia is a key donor and volunteer sending country with respect to overseas orphanages, the issue has links to the supply chains and operations of entities in a number of sectors including the charity, travel and tourism, voluntourism, philanthropy, corporate social responsibility, education and faith-based sectors.

Defining an 'Orphanage'

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

- ✓ Children's Homes
- ✓ Children's Villages
- ✓ Shelters and transit centres
- ✓ Institutions
- ✓ Boarding facilities

Orphanage Trafficking

Orphanage trafficking is a nuanced and complex issue. On the surface it is an issue of supply and demand whereby the steady stream of volunteers and donors who wish to support orphaned children overseas creates a demand for a ready supply of children to be harboured in institutions or orphanages. To meet the demand, children are recruited or transferred from families into institutions for the purpose of exploitation or profit.



Below the surface, however, is an enabling environment, which orphanage trafficking is dependent upon for its existence. This environment is the result of intersecting factors including poverty, marginalisation and vulnerability affecting families, a lack of appropriate community-based support for children and families, and privatised and under regulated institutionalised systems of alternative care in which children's care is easily commodified.¹

In this environment, traffickers are able to operate by disguising their intent to exploit and profit from children in orphanages under the guise of offering support to families. They typically recruit children from vulnerable families who are faced with few if any other options to access services such as education, or meet children's basic food, healthcare and shelter needs. Families may also initiate the transfer of a child to an orphanage, once again, seeking support in response to vulnerability, however, unwittingly hand their children over to an operator who has an intent to exploit and commodify children once in 'care'. Regardless of whether a child is recruited under false pretences or transferred, if the intention is exploitation once in the orphanage, it constitute orphanage trafficking.

Forms of exploitation common in orphanages include child labour, sexual exploitation, domestic servitude and slavery like practices, including harbouring children in sub-standard and detrimental conditions to elicit sympathy and donations from tourists, volunteers and foreign donors. Children who are victims of orphanage trafficking are often exposed to multiple forms of exploitation.

¹ Manfred Nowak, 'Report of the Independent Expert leading the United Nations global study on children deprived of liberty' (2019) UN Doc A/74/136, 13/23.

The demand element. How is it created?

In the broadest sense, our unquestioning support of orphanages; the assumptions we hold about their inherent good and the orphan status of the children residing in them, sustains the system of institutional care. This translates into a ready supply of generous people who are willing to give of their time and resources to support children in orphanages, which in turn drives the demand for children to be in institutions. Orphanage trafficking therefore becomes a means of capitalising on good intentions and both meeting and profiting from the resulting demand.

Orphanage tourism is a key risk indicator for orphanage trafficking, as it is one of the most effective and common means of profiting from children's institutionalisation and is often associated with exploitation. To elicit sympathy from tourists, visitors and volunteers, children may be kept in substandard conditions, intentionally malnourished and/or in slavery like conditions. Directors will claim this is due to insufficient funds, which can result in visitors and volunteers parting with larger sums of money in an attempt to rectify the poor standards.

Children's orphan-hood status is often also falsified as a part of the trafficking process and/or to elicit greater sympathy. This can be through fake documentation such as parent's death certificates or child abandonment certificates, false narratives espoused to donors, or falsified birth certificates that seek to erase the children's parents from their record. In other cases, parents are coerced into signing unlawful contracts to prevent them from seeking the return of their children or forcing them to relinquish their rights, including to contact with their children. This is, in most cases, designed to sustain the 'orphan' narrative that would otherwise be disrupted should so called orphans return to their families.



Orphanage tourism puts profit above the protection needs of children and exposes children to a greater risk of abuse and sexual exploitation in care. Tourists and volunteers, often unvetted, are given access to highly vulnerable children and orphanages are a known target for those with intent to abuse children. It is common for volunteers to be unsupervised or under supervised, and some orphanages permit volunteers to sleep on site and/or take children off site without supervision. Sexual exploitation in care also happens at the hands of directors and staff, and in some cases, their extended families or networks.

In countries like Cambodia, children themselves are used to stir demand. They are sent into tourist districts to invite tourists to 'orphan shows' held at the institution 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.

It is important to note that most organisations that run or promote orphanages and facilitate orphanage tourism are not involved in the actual trafficking. Facilitating orphanage tourism is often a means of remaining financially viable as an organisation or service. However, this still constitutes the commodification of children's care, particularly as orphanage tourism and child institutionalisation are not practices that are in the child's best interest, and a demand for orphanage tourism drives orphanage trafficking.

How are entities who operate in Australia involved in this?

Entities who operate in Australia may be connected to orphanage trafficking and child exploitation in institutions through their structures, supply chains or operations. There are numerous scenarios in which this can take place. For example:

- ✓ A company may run a corporate social responsibility program and send or permit staff to use paid time to volunteer in an overseas orphanage.
- ✓ An Australian travel and tourism retail business may sell holiday packages and have wholesalers or destination tour companies in their supply chains that facilitate orphanage tourism.
- ✓ A large charity or church in Australia may raise funds to support an overseas orphanage run by a third-party organisation and one or both parties may facilitate orphanage tourism via donor visits, short-term mission trips and/or volunteering opportunities.
- ✓ An entity with a trust fund under its control may fund or otherwise support an overseas orphanage.

In all of these scenarios, there is a risk that the entity may be causing, contributing to or linked to orphanage trafficking and/or child exploitation in institutions as a result of the activities that intersect with orphanages.



Implications of the Modern Slavery Act for reporting entities

The Modern Slavery Act requires reporting entities to report against 6 mandatory criteria which are outlined in detail in the Commonwealth Modern Slavery Act 2018: Guidance for reporting entities.



The table below provides examples of ways reporting entities with orphanages in their operations and supply chains may address each of the mandatory criteria with respect to the risk of orphanage trafficking and child exploitation in institutions.

Mandatory Reporting Criteria	Implications for entities with orphanages in structures, operations or supply chains
1. Identify the reporting entity	Specific implications not applicable
2. Describe the structure, operations and supply chains of the reporting entity	<ul style="list-style-type: none"> • Structure- Identify if the reporting entity owns or controls any other entities which may operate or support overseas orphanages, including trusts or charities. • Operations- identify and disclose any operations that may intersect with orphanages such as philanthropic activities or corporate social responsibility programs. • Supply chains- identify and disclose any services or products that may involve orphanages, including orphanage tourism, and include information about suppliers, third-party providers, their geographical locations and the countries where these services/activities take place.
<p>3. Describe the risks of modern slavery practices in the supply chains and operations of the reporting entity and other entities it owns or controls.</p> <p>Include in here an assessment of general risks plus risks associated with specific factors such as:</p> <ul style="list-style-type: none"> • Sector and Industry • Product and Services • Geographical locations • Entity structures <p>Assess and include information as to whether the entity is at risk of:</p> <ul style="list-style-type: none"> • Causing; • contributing to; or • being linked to modern slavery; 	<ul style="list-style-type: none"> • Identify the nature of the activities that involve overseas institutions and whether they are within the operations, structure or supply chains of the reporting entity. Activities could include managing an overseas residential care service, providing in kind or financial support, sending volunteers, facilitating tourism or voluntourism, conducting third-party activities inside an institution, or promotions and fundraising. • Identify orphanage trafficking and child exploitation in overseas institutions as a general risk of interacting with institutional care services overseas. • Identify risks associated with specific factors such as: <ul style="list-style-type: none"> a. <u>Products and services</u> - whether the orphanage facilitates orphanage tourism, including volunteering or permits visiting. b. <u>Geographic location</u> - whether the orphanage is located in tourist destination and/or a country where orphanage trafficking and child exploitation in institutions has been well documented. c. <u>Entity structure</u> - whether the orphanage is privately run and funded, what its registration and licensing status is, and whether sufficient structure exists to ensure accountability, transparency and robust safeguarding. • Identify whether, based on the sum total of factors, the entity is at risk of causing, contributing or being linked to the risk of orphanage trafficking and child exploitation in institutions.

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4. Describe the actions taken to assess and address the risks, including due diligence and remediation.
- Provide details of the due diligence assessment framework developed to assess and evaluate the activities and institutions in which they are being conducted. Use a human rights due diligence framework and assess for the impact of institutional care and other activities on child rights.
 - Provide details on action taken in response to due diligence assessment findings, for example, increasing child safeguarding measures, strengthening partnership standards and accountability measures.
 - Where the reporting entity's activities or operations were found to be contributing to or linked to the modern slavery risks, provide information on remedial measures taken to cease or prevent contribution. Measures could include:
 - divestment from orphanage tourism,
 - supporting and encouraging the orphanage to transition to family-based care,
 - divestment from funding/visiting orphanages where influencing transition and/or closure is not possible.
 - participation in public and stakeholder awareness raising efforts,
 - implementation of stronger child safeguarding policies and mechanisms to protect children in the context of future activities and operations.
 - Where modern slavery risks identified were caused by the entity's activities or operations, provide information on remedial measures taken to cease and prevent ongoing contributions (as above) plus provide information on measure taken to remedy the impact. This could include:
 - Referring the matter to relevant child protection authorities or CSOs for further intervention.
 - Agreements with CSOs or authorities to provide support and cooperate in the rehabilitation process of any children identified as victims of trafficking and/or exploitation (through providing resources to enable children to access therapeutic and reintegration services for example).
 - A commitment to report and cooperate with authorities in any investigation or process that may arise in response to uncovering child trafficking and exploitation.
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| 5. Describe the monitoring and evaluation processes in place to assess the effectiveness of action taken. | <ul style="list-style-type: none">• Include information on any staff and stakeholder training that has been undertaken, including on child protection and safeguarding.• Include information about how the key safeguarding procedures are monitored, reviewed and evaluated.• Include information on how any new activities, products or services designed as alternatives to orphanage tourism or the support of institutional care were assessed and vetted for risks of modern slavery and human rights impacts.• If activities and operations continue to involve direct or indirect contact with children, include information on the child protection monitoring and evaluation framework, including on the implementation of child friend reporting mechanisms.• Include information on any feedback mechanisms put in place for stakeholders, including mechanisms that facilitate child participation in review processes (where activities continue to involve children).• Include information on any partnerships formed with industry experts, including child rights and child protection NGOs or networks where activities involve children. |
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| 6. Describe the process of consultation with entities owned or controlled by the reporting entity | <ul style="list-style-type: none">• Include information on how the identification, assessment and response processes as outlined under Mandatory Criteria 3 and 4 aware conducted for all controlled or owned entities where a nexus with orphanages exists in their operations or supply chains.• Include information on any awareness raising efforts conducted with controlled or owned entities as a part of risk management or divestment strategies.• Include information on the process of consultation and the development of feedback loops between the reporting entity and any controlled or owned entities for the purpose of monitoring and implementing modern slavery risk management strategies. |
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Potential impacts and implications of the legislation for non-reporting entities

Entities, including charities, NGOs and companies, who do not meet the threshold for reporting may be indirectly impacted by the legislation in one of two ways; through connections to the supply chains of reporting entities, or as a result of changing community expectations and increasing awareness of modern slavery risks.

Connection to supply chains

Entities who form part of the supply chains of reporting entities may need to be ready to demonstrate what measures they have in place to address, minimise and manage risks of modern slavery in their operations as reporting entities conduct supply chain audits and due diligence assessments on their suppliers/providers.

Where an entity's activities, services or products intersect with orphanages, they may need to demonstrate that they have in place measure such as the following:

- ✓ A visiting and volunteering policy- that clearly prohibits orphanage tourism and unskilled volunteering². This could be a stand-alone policy or an inclusion in the organisation's child protection policy.
- ✓ Licenses, registrations and agreements- to verify that all alternative care services are duly and appropriately registered, and all licensing conditions met.
- ✓ Robust gatekeeping mechanism and policy- to demonstrate that the admission of children into alternative care services is in strict accordance with national laws and international norms (Guidelines on the Alternative Care for Children) and mandated by the relevant authorities.

- ✓ Robust child safeguarding policy- which includes sections addressing ethical communications, confidentiality and privacy for children in care, donor and sponsor communications with children, supervision, child safe recruitment processes, reporting and redress mechanisms, child participation and child-friendly processes, staff and a stakeholder code of conduct.

- ✓ Inspection reports- demonstrating that all minimum standards are being met by the alternative care service provider, including those that pertain to reintegration.

- ✓ Human Rights Due Diligence Framework- to ensure all activities and operations, including those managed by third-party contractors, accord with child rights and international human rights norms and any third-party providers or services have been assessed against this framework.

² See for a definition of voluntourism, including orphanage tourism, and guidance on responsible volunteering, see the ACFID Practice Note, Responsible International Volunteering for Development. https://acfid.asn.au/sites/site.acfid/files/resource_document/ACFID%20Practice%20Note-%20Volunteering%20for%20International%20Development.pdf

Awareness of modern slavery risks and changing community expectations

As public awareness of modern slavery risks increases, community expectations of businesses/entities to eradicate slavery in their supply chains will also increase. These shifting social norms and pressures can have a positive impact on whole sectors and make it in the interest of all entities to employ a human rights approach to business operations and work towards slavery free supply chains. As such, above listed measures are relevant good practice measures for all entities whose operations and/or supply chains intersect with alternative care services for children- regardless of any obligation to report or possibility of audit.



Other relevant regulations for charities

Australian charities operating overseas activities are also required to comply with the Australian Charities and Not for Profit Commission's External Conduct Standards. The regulation which is comprised of a set of four standards came into effect in July 2019. The standards have implications for charities conducting overseas activities that involve orphanages, including those implemented by third parties. The Standards require charities to put in place appropriate measures to protect all children who come in contact with charities' overseas activities from harm, abuse and exploitation and require charities to comply with laws and minimum standards. Furthermore, the Standards link compliance with Australian laws pertaining to modern slavery including the Modern Slavery Act and trafficking and exploitation divisions of the Commonwealth Criminal Code. For more information see:

- ✓ [ACNC External Conduct Standards](#)
- ✓ [Working with Children in Residential Care: Implications of the ACNC External Conduct Standards for Australian Charities](#)
- ✓ [Partnership Due Diligence Assessment Tool: Residential care service providers](#)

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