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ACFID Child Rights Community of Practice

Joint Submission to Australian Border Force on the National Action  
Plan to Combat Modern Slavery 2020-24 Public Consultation Paper

## About ReThink Orphanages and the ACFID Child Rights Community of Practice

ReThink Orphanages Australia is a cross-sector network with members drawn from academia, child protection, not-for profit, charity, tourism, faith-based and education sectors. The network was formed in early 2015 in order to prevent the unnecessary institutionalisation of children by shifting the way Australia engages with overseas aid and development.

ReThink Orphanages Australia has played a lead role in advocating for Australia to introduce measures to combat child exploitation in overseas orphanages, and orphanage trafficking, particularly in the context of the 2017 Parliamentary Inquiry into Establishing a Modern Slavery Act, the subsequent drafting of the Modern Slavery Act 2018 Guidance for Reporting Entities, and the ACNC Minimum External Conduct Standards introduced in 2019.

ReThink Orphanages Australia also works with partners in other countries and regions, including through the ReThink Orphanages Global Network and country hubs, to encourage and support other countries and sectors to adopt similar measures.

## About the ACFID Child Rights Community of Practice

The Child Rights Community of Practice (CR CoP) is an Australian Council for International Development (ACFID) member-led and run working group. *The overarching goal of the Child Rights Community of Practice is to promote the rights of children and child rights-based approaches to development within the Australian international development sector.*

The CR CoP currently has more than 60 members comprised of representatives from Australian international development agencies and child protection consultants. For the past four years, one of the key objectives of the CR CoP, and the focus of one of four of its sub-groups has been advocating for the rights of children in overseas residential care institutions.

The CR CoP have taken a lead role in raising awareness of the plight of children in overseas institutions and have consistently called for development programs that intersect with separated children to be underpinned by a child rights framework. This included through the development of the ACFID Position Paper: Residential Care and Orphanages in International Development and associated advocacy.

The CR CoP made a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade during the Inquiry into whether Australia should establish a Modern Slavery Act, calling for orphanage trafficking and tourism to be captured within the scope of Australia's MSA. Furthermore, the CR CoP made a joint submission to Treasury as a part of the public consultation process for the ACNC External Conduct Standards and advocated for greater regulation of charities involved in the support of overseas orphanages and orphanage tourism.

ACFID participates in the National Roundtable on Human Trafficking and Slavery, and with support from the CR CoP membership, has ensured that the issue of orphanage trafficking and exploitation in overseas institutions has been raised and considered in this forum.

## Terms of the Public Consultation and Submission

In this submission to the Australian Border Force public consultation process around the development of the Action Plan to Combat Modern Slavery 2020-24 (herein referred to as the Action Plan), the ACFID CR CoP and ReThink Orphanages will seek to:

- Respond to question one of the consultation questions: *Do the 12 goals capture key areas of focus for Australia over the next five years?*
- Provide further information and suggestions specific to the issue of orphanage trafficking and ways this form of modern slavery may be addressed under the proposed goals listed in the public consultation paper.

## About the issue of “Orphanage Trafficking”

Orphanage trafficking is an issue of supply and demand whereby the volume of volunteers and donors who wish to support orphaned children overseas creates a demand for 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.

Orphanage trafficking depends upon an underlying enabling environment 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.<sup>1</sup> 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 in response to vulnerability, however, unwittingly hand their children over to an operator with intent to exploit and commodify children once in ‘care’. It is immaterial whether a child is recruited under false pretences or transferred as a result of deception. If the intention is exploitation once in the orphanage, it constitutes orphanage trafficking.

Forms of exploitation common in orphanages include child labour, sexual exploitation, domestic servitude and slave 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.<sup>2</sup>

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

<sup>2</sup> ReThink Orphanages Australia & ACFID CR CoP, 2019, *Partnerships with Overseas Orphanages*, Dec 2019.

## The ACFID CR CoP and ReThink Orphanages Australia's joint recommendations and position on proposed goals of the Action Plan.

- The ACFID CR CoP and ReThink Orphanages Australia welcome the opportunity to provide input into the public consultation process for the development of the 2020-24 Action Plan.
- We affirm the importance of the 12 proposed goals as listed in the Australian Border Force National Action Plan to Combat Modern Slavery 2020-24 Public Consultation Paper. We in principle support the intention to develop the Action Plan on the basis of the aforementioned goals, however, wish to express an interest in providing input/feedback into the particulars, as detailed below.
- We commend the government's commitment under proposed Goal One, to remain compliant with international standards pertaining to trafficking and modern slavery. We recognise the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on the 14 September 2005 as the primary instrument for setting international standards pertaining to trafficking. We acknowledge Australia's obligation, as State party to the Protocol, to criminalise, investigate, prosecute, and prevent human trafficking.

To meet this commitment and in recognition of Australia's obligation, we advocate for the Action Plan to include a focus on ensuring Australia's legislative framework is brought into conformity with international standards, drawing attention to the limitations created due to the current definitional contours of Division 271 of the *Criminal Code 1995* (Cth). We propose steps are included in the Action Plan to review and pursue amendments to the *Criminal Code 1995* (Cth) to ensure that all forms of trafficking perpetrated by Australian citizens, residents and entities, including offense that take place in foreign jurisdictions and without nexus with Australian borders, can be prosecuted under Australian Law.<sup>3</sup> As networks dedicated to advocating for child rights, we are particularly concerned that the current wording of Division 271 does not allow for orphanage trafficking to be prosecuted under Australian law.

We draw attention to the recent commitment made in the context of the 74<sup>th</sup> Session of the UNGA which saw Member States, including Australia, commit to:

*Taking appropriate measures to protect children who are victims of trafficking and are deprived of parental care, as well as enacting and enforcing legislation to prevent and combat the trafficking and exploitation of children in care facilities, and supporting children who are victims of human trafficking in returning to their families and in receiving appropriate mental health and psychological assistance that is victim-centred and trauma-informed and taking appropriate measures to prevent and address the harms related to*

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<sup>3</sup> van Doore, K & Nhep, R (2019) 'Orphanage Trafficking Modern Slavery and the Australian Response', *Griffith Journal of Law and Human Dignity*, Vol 7, Issue 2, <https://griffithlawjournal.org/index.php/gjlhd/issue/view/113>

*volunteering programmes in orphanages, including in the context of tourism, which can lead to trafficking and exploitation;*<sup>4</sup>

The inclusion of an objective in the Action Plan to pursue legislative amendments to the trafficking division of Australia's *Criminal Code 1995 (Cth)* would therefore constitute an action in fulfilment of this important commitment and consistent with Australia's stated intention to play a leadership role in combatting orphanage trafficking. It would also be an action consistent with proposed Goals One and Four listed in the public consultation paper.

- We commend the Australian government's recognition of orphanage trafficking and exploitation of children in institutional care settings as an emerging form of modern slavery and applaud the government's efforts and leadership in combating orphanage trafficking.<sup>5</sup> The development of the 2020-24 Action Plan presents a strategic opportunity to further these efforts and leadership and work towards the full enactment of the whole of government strategy to combat orphanage tourism as outlined in chapter 8 of the Modern Slavery Act Inquiry final report, 'Hidden in Plain Sight'. In particular we advocate for the following recommendations taken from the final report to be incorporated as objectives under proposed Goal Eleven of the Action Plan:

#### **Recommendation 34**

32. The Committee further recommends that the Australian Government work with its international partners in Alliance 8.7 to ensure that children living in overseas residential institutions are included in data gathered to monitor progress against the United Nations Sustainable Development Goals.

#### **Recommendation 37**

8.84 The Committee recommends that the Australian Government, particularly through its work with Alliance 8.7, ASEAN, APEC and other regional fora, as well as international bodies such as the Commonwealth Heads of Government Meeting (CHOGM), continue to work with international governments to raise awareness of orphanage trafficking and exploitation as a form of modern slavery.

- We advocate for greater sensitisation and training of Australian federal police around orphanage trafficking to be incorporated under proposed Goal Five, to aid in the identification and prosecution of orphanage trafficking cases. We furthermore advocate for the training of frontline officials to incorporate child friendly procedures for interviewing, including child-friendly spaces and social work support during interviews, managing disclosures, providing victim centred support, and keeping children informed throughout the investigative process. This is particularly relevant to

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<sup>4</sup> United Nations General Assembly (2019) *Rights of the Child Resolution*, Art 35 (t) A/74/395 <https://undocs.org/A/74/395>;

<sup>5</sup> Parliament of the Commonwealth of Australia (2018) *Explanatory Memorandum to the Modern Slavery Act 2018 (Cth)*, <https://www.legislation.gov.au/Details/C2018B00136/Explanatory%20Memorandum/Text>; Parliament of the Commonwealth of Australia *Modern Slavery Act 2018 Guidance for Reporting Entities (2019)* <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>; Reynolds, Senator L (2019) <https://www.lindareynolds.com.au/issues/modern-slavery/>

overseas posts in regions where orphanage trafficking and orphanage tourism are prevalent.

- As a component of achieving Goal Three, we advocate for the introduction of specific child focused and friendly mechanisms to capture feedback from child victims as a part of the government's M & E framework, to ensure stakeholder understandings of risk, indicators and responses to child victims of trafficking and exploitation are evidenced-based.
- Finally, we recommend the inclusion in the Action Plan of a goal which commits the government to remaining current and responsive to emerging forms of modern slavery, recognising the evolving nature of modern slavery practices. This commitment should be underpinned by actions that allow for new forms of modern slavery and emerging issues to be raised, evidenced, evaluated for relevance to the Australian context and reviewed with respect to Australia's legislative and policy framework. This is critical to ensuring Australia remains at the forefront of efforts to combat modern slavery in all its forms and compliant with international standards with respect to emerging issues. As such we believe this recommended is closely related to the fulfilment of the following goals:
  - Goal One: maintain and promote compliance with international standards on modern slavery.
  - Goal Three: promote an evidence-based response to modern slavery
  - Goal Four: maintain a robust and comprehensive legislative framework to combat modern slavery.
  - Goal Five: train frontline officials to support the identification of victims and effective investigations of modern slavery.

## Final Remarks

The Australian government has demonstrated a commendable degree of global leadership with respect to combating modern slavery. The enactment of the *Modern Slavery Act 2018* (Cth), the release of world class comprehensive *Guidance for Reporting Entities*, and Australia's leadership on the issue of orphanage trafficking are amongst the government's notable accomplishments.

The development of the 2020-24 Action Plan represents an important and strategic opportunity for Australia to continue to demonstrate a strong and cutting-edge position with respect to combatting modern slavery, including orphanage trafficking. As a new and emerging form of modern slavery, Australia's ongoing leadership in addressing orphanage trafficking in the context of the Action Plan would not only contribute tangibly to the protection of vulnerable children and prevention of human trafficking, it will model a replicable course of action to other countries that could foreseeably result in its eradication.