



Griffith Law School

Submission to the Inquiry to establish a Modern Slavery Act in Australia

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Thank you for the opportunity to make a submission to this important inquiry. This submission focuses on the issue of paper orphaning as a form of modern slavery. I define 'paper orphaning' as the active recruitment of children into orphanages or residential care institutions in developing nations for the purpose of ongoing exploitation, particularly through orphanage tourism.¹ Orphanage tourism includes volunteering at, or visiting, orphanages in developing countries. This is an increasingly popular tourist attraction for many Australians visiting Indonesia, Cambodia, Nepal and Uganda, as well as many other developing nations. The demand for orphanage tourism creates a demand for children to be available in orphanages to volunteer with, which ultimately drives recruiters to traffick children into orphanages.

My recent research has focused heavily on the recognition of paper orphaning as a form of human trafficking and modern slavery. I further note that the issue of orphanage tourism as a demand driver for paper orphaning has been submitted to the United Kingdom Independent Anti-Slavery Commission's 'Mapping the current evidence base on contemporary slavery (including human trafficking)'.²

The terms of the Inquiry that I am responding to are:

¹ Kathryn E. van Doore, 'Does orphanage volunteering create a demand for child trafficking?' on *Campus Compact* <<http://compact.org/resource-posts/does-volunteering-in-an-orphanage-create-a-demand-for-child-trafficking/>>. Last accessed 27 April 2017.

² Anti-Slavery Commissioner, *Mapping Research on Contemporary Slavery (including human trafficking)* <<http://www.antislaverycommissioner.co.uk/media/1124/mapping-research-on-contemporary-slavery.pdf>>. Last accessed 27 April 2017.

Term 1: The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;

It is estimated that there are between 2 and 8 million children residing in orphanages internationally.³ A pivotal report in 2009 by Save the Children found that four out of five of these children were not orphans⁴ but that some poor families were coerced into giving up their children in exchange for money by unscrupulous institutions and adoption agencies hoping to profit from either the residence or trafficking of children.⁵

Paper orphaning begins with the active recruitment of children from biological families into orphanages predicated on fraudulent promises made to the child's family concerning entering the child into formal education. The child is then taken to an orphanage and has new identity documents forged (including new birth certificate and death certificates of parents) formalising their status as an orphan. The child is maintained as an orphan and made available for orphanage tourism. Essentially, children are being institutionalised for the purpose of people volunteering with, and visiting, them and to encourage donations to orphanages.

The reason that this is of interest to this Inquiry is that one of the demand drivers for paper orphaning is orphanage tourism from Australia. Orphanage tourism is where tourists with good intentions 'hoping to ameliorate the circumstances of orphanhood' include both visits and volunteering in orphanages as part of their travel plans.⁶ Orphanages are frequently established in locations that are popular with western travellers to increase the appeal of volunteering.⁷ The demand for orphanage tourism results in the active recruitment of children into orphanages. There have been several instances of Australian charities being

³ Corinna Csáky, 'Keeping children out of harmful institutions: Why we should be investing in family-based care' (Report, Save the Children, 2009) 3; John Williamson and Aaron Greenberg, 'Families, not orphanages' (Report, Better Care Network, 2010) 5.

⁴ Csáky, above n3, vii.

⁵ Ibid 5.

⁶ Kristen E Cheney and Karen Smith Rotabi, 'Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems' in Kathrin Hörschelmann Christopher Harker, Tracey Skelton (ed), *Conflict, Violence and Peace, Geographies of Children and Young People* (Springer, 2015) vol 11, 5.

⁷ P Jane Reas, "'So, Child Protection, I'll Make a Quick Point of It Now": Broadening the Notion of Child Abuse in Volunteering Vacations in Siem Reap, Cambodia' (2015) 18(4) *Tourism Review International* 295, 306.

specifically set up to fund overseas orphanages and then discovering the orphanages were established for the purpose of profit and the resident children had families.⁸

There are two facets to the institutionalisation as a form of exploitation that paper orphans experience. The first is the continued maintenance of the child as a paper orphan in the orphanage without contact with their birth family. The second is through the commodification of paper orphanhood in the form of orphanage tourism.

Children subject to ongoing institutionalisation experience a heightened risk of violence in comparison to children in the community.⁹ Children in institutions may be subject to violence within the institution from staff or officials and may also suffer from isolation, stigmatisation and de-socialisation.¹⁰ Studies have recorded a range of abuses including 'systematic rape and other forms of sexual abuse; exploitation, including trafficking; physical harm such as beatings and torture; and psychological harm including isolation, the denial of affection and humiliating discipline' all occurring within institutions.¹¹ In addition, the outcomes for children who grow up in orphanages are far worse than those who grow up in families or other forms of alternative care such as fostering. One in three children exiting residential care become homeless; one in five gains a criminal record; and as many as one in ten commit suicide.¹² Even where an orphanage is clean and well run, the risk remains.¹³ Many organisations tout their residential care centre or orphanage as a protective shelter to avoid potential trafficking or re-trafficking of children. However, there is a very fine line between offering protective shelter for a short period of time (whilst family tracing and reunification can take place) and permanent residential care, which is what many of these organisations utilise. The latter can be regarded as a form of detention¹⁴ which is contrary to the protection mandate these organisations act under.

Some orphanage operators deliberately withhold food and proper living environments in an effort to keep paper orphans looking malnourished to attract more sympathy from visitors

⁸ Kathryn E. van Doore, 'The Business of Orphanages: Where do 'Orphans' come from?' on *The Conversation* (10 March 2015) <<https://theconversation.com/the-business-of-orphanages-where-do-orphans-come-from-38485>>. Last accessed 27 April 2017.

⁹ Paulo Sérgio Pinheiro, 'World Report on Violence against Children 2008 ' (Report, United Nations Secretary-General's Study on Violence against Children, 2008) 175.

¹⁰ Ibid 175.

¹¹ Csáky, above n3, 7.

¹² United Nations Office of the High Commissioner on Human Rights, 'The Rights of Vulnerable Children Under the Age of Three: Ending their Placement in Institutional Care' (Report, United Nations Office of the High Commissioner on Human Rights, 2011) 17.

¹³ UNICEF, 'State of the World's Children Report' (Report, UNICEF, 2013) 80.

¹⁴ Anne Gallagher and Elaine Pearson, 'The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking' (2010) 32(1) *Human Rights Quarterly* 73, 99-100.

and volunteers and thereby being more profitable commodities.¹⁵ At an orphanage in Haiti, it was reported that the children were kept deliberately malnourished in order to utilise photographs of 'emaciated orphans' to encourage donations.¹⁶ As a result, the orphanage was receiving approximately USD\$6000 per child per year from foreign donors with no efforts made to reunify the children with their biological families.¹⁷ Another case reported found that several babies had died as a result of being kept malnourished to facilitate donations.¹⁸ There are many reports of children in Cambodian orphanages forced to perform traditional dance shows for tourists to garner donations, or sent begging in the evenings at tourist hot spots.¹⁹ Guiney and Mostafanezhad argue that orphanage tourism is akin to child labour where the orphanage director profit in the same way as 'traditional capitalist accumulation'.²⁰

The constant rotation of volunteer caregivers contributes to attachment disorders in children without primary caregivers.²¹ Those participating in orphanage tourism rarely have appropriate credentials to work with vulnerable children. Often orphanages are utilised by paedophiles posing as volunteers and visitors to access vulnerable children.²² Photographs and stories of paper orphans are used to enhance tourism companies marketing and this violation of 'human rights to privacy and dignity' is an exploitative act.²³

The same paper orphaning process has been identified in Nepal, Cambodia, Ghana, Uganda, Guatemala, Haiti, Kenya and many other countries.²⁴ Paper orphans have thus far not been considered as trafficked under international law due to the interpretation of the element of

¹⁵ Tess Guiney, 'Orphanage Tourism' in Cambodia: When Residential Care Centres Become Tourist Attractions' (2012) 38 *Pacific News* 9, 13.

¹⁶ Lumos, 'Universal Periodic Review - Republic of Haiti: Submission by Lumos concerning the Republic of Haiti for consideration during the 26th session of the Universal Periodic Review Working Group in the Human Rights Council' (Submission, Lumos, 2016) 4.

¹⁷ Georgette Mulheir and Mara Cavanagh, 'Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children' (Report, Lumos, 2016).

¹⁸ Lumos, above n16, 4.

¹⁹ UNICEF, 'With the best intentions: A study of attitudes towards residential care in Cambodia' (Report, UNICEF & Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia, 2011) 27.

²⁰ Tess Guiney and Mary Mostafanezhad, 'The political economy of orphanage tourism in Cambodia' (2014) 15(2) *Tourist Studies* 132.

²¹ Linda M Richter and Amy Norman, 'AIDS orphan tourism: A threat to young children in residential care' (2010) 5(3) *Vulnerable Children and Youth Studies* 217.

²² Kathryn E. van Doore, Florence Martin and Anna McKeon, 'Expert Paper: International Volunteering and Child Sexual Abuse' in ECPAT International (ed), *Global Study on Sexual Exploitation of Children in Travel and Tourism* (ECPAT, 2016)

²³ Karen Smith Rotabi, Jini L. Roby and Kelley McCreery Bunkers, 'Altruistic Exploitation: Orphan Tourism and Global Social Work' (2016) *British Journal of Social Work* 1, 8.

²⁴ Better Care Network, 'Collected Viewpoints on International Volunteering in Residential Care Centres: An overview' (Report, Better Volunteering, Better Care, 2014); Lumos, 'Children in Institutions: The Global Picture' (Report, Lumos, 2015).

exploitation provided in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children²⁵ (hereinafter “the Trafficking Protocol”). However, in domestic law in some countries this process is now recognized as trafficking (Nepal and Haiti). In the research article, ‘Paper Orphans: Exploring Child Trafficking for the purpose of Orphanages’ published in the International Journal of Children’s Rights in 2016, I articulate a legal argument for why paper orphans meet the criteria for ongoing exploitation and should be regarded as victims of human trafficking at international law, and therefore is a version of what is termed ‘modern slavery’.²⁶ This research has been met very positively internationally.

Term 2: The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;

Anecdotal evidence suggests that each year thousands of volunteers and tourists from Australia participate in orphanage tourism and volunteering. Australians are keen to volunteer with 93% of Australian charities working overseas reporting that they utilize volunteers.²⁷ While orphanage tourists and volunteers usually have very good intentions, they often fail to realize or engage with how harmful the practice can be for the children in the care of the orphanage. It is hard to quantify Australia’s involvement in this industry precisely due to the many ways it is promoted. Orphanage volunteering and tourism is promoted and offered through university placements (comprise of both volunteer placements and overseas internships for course credit), international volunteering and travel agencies, private and public school overseas trips, missions trips facilitated by churches or faith-based organisations, volunteer placements organized by Australian NGOs, corporate social responsibility programs, and general tourism.²⁸

Where orphanage tourism is regarded as a form of modern slavery, it is of concern for companies that promote and profit from this form of tourism, and countries that send

²⁵ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) (*Trafficking Protocol*).

²⁶ Kathryn E. van Doore, 'Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages' (2016) 24(2) *International Journal of Children's Rights* 378.

²⁷ Penny Knight and David Gilchrist, 'Australian Charities Involved Overseas: A study supplementing the Australian Charities 2013 Report' (Report, Curtin University Not for Profit Initiative, 2015) 11.

²⁸ Kathryn E. van Doore, Laura Healy and Megan Jones, 'Mapping Australia's Support for the Insitutionalisation of Children Overseas' (Report, ReThink Orphanages, 2016) 4.

volunteers, such as Australia. A mapping report that I undertook for ReThink Orphanages²⁹ concluded that there were at least:

- **245 registered NGOs directly funding or sending volunteers** to residential care institutions and **565 charities involved/operating residential care institutions overseas**, which represented **9.7% of all charities involved/operating overseas**. As a total percentage of all charities, 1.5% of Australian charities are contributing to residential care institutions overseas.
- There were at least **22 organisations holding Public Benevolent Institution** status through the ACNC that are contributing to residential care overseas. However it was noted that registrations for PBI status by organisations operating within this area are increasing due to a recent change in law
- There were **35 auspiced projects** funded by **10 major auspicers** supporting residential care centres. These auspicers all hold DGR status under the OAGDS.
- A total of **22 travel agencies/organisations** identified as both registered and operating in Australia were found to be sending volunteers to residential care centres. A further 61 travel agencies/organisations were identified as recruiting Australian volunteers to work overseas, but these organisations are based and registered outside Australia. There was no available data on how many travel agencies in total are operating in Australia.
- **57.5% of Australian universities** advertised orphanage placements through international volunteering opportunities
- In relation to high schools the following was found:
 - Queensland – 9.89% of public high schools and 9.28% of private high schools fundraised or took school trips to orphanages
 - Victoria – 15.61% of public high schools and 13.08% of private high schools fundraised or took school trips to orphanages
 - New South Wales – 8.41% of public high schools and 9.98% of private high schools fundraised or took school trips to orphanages
 - Western Australia – 4.35% of public high schools and 14.65% of private high schools fundraised or took school trips to orphanages
 - Australian Capital Territory – 15.79% of public high schools and 11.11% of

²⁹ Ibid.

- private high schools fundraised or took school trips to orphanages
- Tasmania – 6.35% of public high schools and 13.89 % of private high schools fundraised or took school trips to orphanages
- South Australia – 11.11% of public high schools fundraised or took school trips to
- orphanages
- Northern Territory – 11.11% of private high schools fundraised or took school trips to orphanages.

Australia has a responsibility to ensure that our obligations as signatories to the United Nations Convention on the Rights of the Child (CRC) are upheld in our interactions with children, whether in Australia or in our direct impact overseas. As a party to the CRC, Australia is required to recognise and operationalise its provisions in domestic legal and policy frameworks. In accordance with the CRC, children have the right to grow up in a family environment. This is supported by the United Nations Guidelines for the Alternative Care of Children, which supports the preservation or reestablishment of families and identifies a spectrum of options for alternative care.³⁰ Institutional care is considered a last resort and avoided for children under the age of three, unless there are very compelling reasons for exception. Our domestic child protection system recognises out-of-home care is a last resort for the protection of children and supporting children within their family, or in another family environment through kinship or foster care are the preferred options.³¹ However, how Australian entities interact with vulnerable children overseas is often contrary to this and Australians who volunteer in, found or fund orphanage care are usually celebrated.

It is important to realise that despite good intentions, these volunteers and organisations are contributing to the incidence of keeping children institutionalised which is contrary to international standards, and at worse, may be directly contributing to modern slavery. For the organisations and volunteers themselves, it is often difficult to know whether an orphanage or residential care centre falls into the latter category. However, regardless of whether they believe they are supporting or volunteering in a “good” orphanage, they are

³⁰ United Nations General Assembly, *Guidelines for the Appropriate Use and Conditions of Alternative Care of Children 2009*, 64/142, Third Comm, Sixty-fourth sess, 65th plenary mtg, Agenda Item 64, UN Doc A/RES/64/142 (18 December 2009) principle 22.

³¹ Council of Australian Governments, 'National Framework for Protecting Australia's Children 2009-2020' (Report, Commonwealth of Australia, 2009).

still contributing to the separation of children from their families and contravening the rights of the child to grow up in a family environment.

A Modern Slavery Act that is able to address the supply chains of volunteers paying for and participating in orphanage tourism, as well as organisations funding, sending volunteers to, or founding orphanages has the potential to have a critical impact on the way that Australia engages with vulnerable children internationally.

Term 3: Whether a Modern Slavery Act should be introduced in Australia;

Whilst it is acknowledged that there are issues in international law with the term 'modern slavery'³², this submission supports the introduction of a Modern Slavery Act insofar as it extends the present coverage of section 270-271 of the Commonwealth Criminal Code to include business supply chain obligations.

From the perspective of paper orphans, the introduction of a Modern Slavery Act has the potential to enact extra-territorial laws that may limit or cease the funding of, or sending of volunteers to, orphanages overseas. This is not intended to limit the amount of funding to vulnerable children, however I believe it would encourage organisations and potential volunteers to engage with the research surrounding the harm of institutional care for children and ensure that decisions are made in the best interest of the child.

On this particular issue, the United Kingdom Modern Slavery Act has not been successful, as its jurisdiction does not extend to this possibility. In this respect, Australia has the unique opportunity to be innovative and to carefully and coherently legislate for the protection of children from modern slavery overseas in the form of orphanage care and voluntourism.

On the basis of my experience, I make the following recommendations:

- That there be recognition that current aid funding structures and volunteers being sent from the Australia is encouraging child trafficking in developing nations.
- That Australian aid funding should not be utilised to support orphanages and should focus on family preservation and community based services instead;
- That Australian businesses and NGOs should not support orphanages in developing nations and recognise the implications of their supply chains and activities and the impact on the trafficking of children internationally;
- That Australian citizens should be encouraged not to volunteer in orphanages as it creates a demand for children to be trafficked.

³² Anne T. Gallagher, 'What's Wrong with the Global Slavery Index?' (2017)(8) *Anti-Trafficking Review* 90, 93.

Please contact me if you have questions regarding this issue, or require further information. I would also be amenable to appearing at the Public Hearings for the Inquiry to discuss my submission further.

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Brief Author biography:

Kathryn (Kate) E. van Doore is an international children's rights lawyer and an academic at Griffith Law School, Australia. Kathryn currently researches the intersections of child rights, institutionalisation and human trafficking. Kate's work includes publishing the first legal argument under international law for the displacement of children from their biological families into orphanages to be regarded as a form of child trafficking. She is a co-founder of Forget Me Not Australia (<http://www.forgetmenot.org.au>), an international non-governmental organization focused on child protection and family reunification for children residing outside of parental care, a member of the Better Volunteering, Better Care Global Working Group (<http://www.bettercarenetwork.org/bcn-in-action/better-volunteering-better-care>) and a founding member of ReThink Orphanages (<http://www.rethinkorphanages.org/>)

References

Better Care Network, 'Collected Viewpoints on International Volunteering in Residential Care Centres: An overview' (Report, Better Volunteering, Better Care, 2014)

Cheney, Kristen E and Karen Smith Rotabi, 'Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems' in Kathrin Hörschelmann Christopher Harker, Tracey Skelton (ed), *Conflict, Violence and Peace, Geographies of Children and Young People* (Springer, 2015) vol 11

Csáky, Corinna, 'Keeping children out of harmful institutions: Why we should be investing in family-based care' (Report, Save the Children, 2009)

Gallagher, Anne T. and Elaine Pearson, 'The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking' (2010) 32(1) *Human Rights Quarterly* 73

Gallagher, Anne T., 'What's Wrong with the Global Slavery Index?' (2017)(8) *Anti-Trafficking Review* 90

Gilchrist, Penny Knight and David, 'Australian Charities Involved Overseas: A study supplementing the Australian Charities 2013 Report' (Report, Curtin University Not for Profit Initiative, 2015)

Governments, Council of Australian, 'National Framework for Protecting Australia's Children 2009-2020' (Report, Commonwealth of Australia, 2009)
<https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf>

Guiney, Tess, 'Orphanage Tourism' in Cambodia: When Residential Care Centres Become Tourist Attractions' (2012) 38 *Pacific News* 9

Guiney, Tess and Mary Mostafanezhad, 'The political economy of orphanage tourism in Cambodia' (2014) 15(2) *Tourist Studies* 132

Lumos, 'Children in Institutions: The Global Picture' (Report, Lumos, 2015)

Lumos, 'Universal Periodic Review - Republic of Haiti: Submission by Lumos concerning the Republic of Haiti for consideration during the 26th session of the Universal Periodic Review Working Group in the Human Rights Council' (Submission, Lumos, 2016)

Mulheir, Georgette and Mara Cavanagh, 'Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children' (Report, Lumos, 2016)

Pinheiro, Paulo Sérgio, 'World Report on Violence against Children 2008 ' (Report, United Nations Secretary-General's Study on Violence against Children, 2008)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) ('*Trafficking Protocol*')

Reas, P Jane, "'So, Child Protection, I'll Make a Quick Point of It Now": Broadening the Notion of Child Abuse in Volunteering Vacations in Siem Reap, Cambodia' (2015) 18(4) *Tourism Review International* 295

Richter, Linda M and Amy Norman, 'AIDS orphan tourism: A threat to young children in residential care' (2010) 5(3) *Vulnerable Children and Youth Studies* 217

Rotabi, Karen Smith, Jini L. Roby and Kelley McCreery Bunkers, 'Altruistic Exploitation: Orphan Tourism and Global Social Work' (2016) *British Journal of Social Work* 1

UNICEF, 'With the best intentions: A study of attitudes towards residential care in Cambodia' (Report, UNICEF & Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia, 2011)

UNICEF, 'State of the World's Children Report' (Report, UNICEF, 2013)

United Nations General Assembly, *Guidelines for the Appropriate Use and Conditions of Alternative Care of Children 2009*, 64/142, Third Comm, Sixty-fourth sess, 65th plenary mtg, Agenda Item 64, UN Doc A/RES/64/142 (18 December 2009)

United Nations Office of the High Commissioner on Human Rights, 'The Rights of Vulnerable Children Under the Age of Three: Ending their Placement in Institutional Care' (Report, United Nations Office of the High Commissioner on Human Rights, 2011)

van Doore, Kathryn E., 'The Business of Orphanages: Where do 'Orphans' come from?' on *The Conversation* (10 March 2015) <<https://theconversation.com/the-business-of-orphanages-where-do-orphans-come-from-38485>>

van Doore, Kathryn E., 'Does orphanage volunteering create a demand for child trafficking?' on *Campus Compact* <<http://compact.org/resource-posts/does-volunteering-in-an-orphanage-create-a-demand-for-child-trafficking/>>

van Doore, Kathryn E., 'Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages' (2016) 24(2) *International Journal of Children's Rights* 378

van Doore, Kathryn E., Laura Healy and Megan Jones, 'Mapping Australia's Support for the Institutionalisation of Children Overseas' (Report, ReThink Orphanages, 2016)

van Doore, Kathryn E., Florence Martin and Anna McKeon, 'Expert Paper: International Volunteering and Child Sexual Abuse' in ECPAT International (ed), *Global Study on Sexual Exploitation of Children in Travel and Tourism* (ECPAT, 2016)

Williamson, John and Aaron Greenberg, 'Families, not orphanages' (Report, Better Care Network, 2010)