

‘Please Stop Australians Coming Here’

Orphanage Tourism, Child Rights and the Australian Response

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¹ Linda Reynolds, ‘Voluntourism’ (Speech, Senate, Parliament of Australia, 2 March 2016).

² Ibid.

³ Linda Reynolds, ‘Australia continues to lead the way against orphanage tourism’ (Media Release, Commonwealth, 1 March 2018) <<https://www.lindareynolds.com.au/australia-continues-lead-way-orphanage-tourism/>>.

⁴ Raweeewan Proyrungroj, ‘Orphan Volunteer Tourism in Thailand: Volunteer Tourists’ Motivations and On-Site Experiences’ (2017) 41(5) *Journal of Hospitality & Tourism Research* 560, 561.

⁵ Tess Guiney, ‘The Political Economy of Orphanage Tourism in Cambodia’ (2015) 15(2) *Tourist Studies* 132, 133.

⁶ P Jane Reas, ‘“Children That Are Cute Enough to Eat”: The Commodification of Children in Volunteering Vacations to Orphanages and Childcare Establishments in Siem Reap, Cambodia’ (2020) 20(2–3) *Tourism, Culture and Communication* 83 (‘Children That Are Cute Enough to Eat’).

⁷ Kristen E Cheney and Karen Smith Rotabi, ‘Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems’ in Tracey Skelton, Christopher Harker and Kathrin Hörschmann (eds), *Conflict, Violence and Peace* (Springer, 2017) 90.

⁸ Joint Standing Committee on Foreign Affairs Defence and Trade, Commonwealth of Australia, *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* (Final Report, December 2017) ch 8 (‘Hidden in Plain Sight Report’) [8.3]; Kathryn E van Doore, ‘Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages’ (2016) 24(2) *International Journal of Children’s Rights* 378.

⁹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (‘Convention’).

¹⁰ Ibid art 9.

¹¹ Ibid art 9(3).

¹² Ibid art 20(1).

I Introduction

On 2 March 2016, Senator Linda Reynolds CSC addressed the Senate regarding her trip to Cambodia with child protection organisation, Save the Children Australia.¹ The topic of her speech was ‘Voluntourism’ and she outlined how, when she had asked how Australians could best assist Cambodia, the message was ‘clear and unequivocal: please stop Australians coming here to support unregulated orphanages and unknowingly becoming what are internationally termed “orphanage tourists”’.² Since that speech, Australia has been regarded as leading the world in responding to what is known as ‘orphanage tourism’.³

Orphanage tourism is a relatively recent phenomenon and is defined as the ‘donation of money and goods, attending performances, or volunteering on a short-term basis at orphanages as part of one’s holiday’ and is a part of the volunteer tourism industry.⁴ Voluntourism has become a booming industry in low and middle-income countries and is estimated to globally generate up to USD2.6 billion per year in revenue.⁵ As a form of voluntourism, orphanage tourism is said to objectify children as commodities to be consumed⁶ and has spawned what is known as the ‘orphan industrial complex’.⁷ It has also been linked to a form of child trafficking known as ‘paper orphaning’ or ‘orphanage trafficking’, where children are transferred or recruited into orphanages for the purpose of exploitation and profit.⁸

This article considers how Australia has responded to the emerging issues of orphanage tourism and orphanage trafficking. The article begins by examining the rights owed to children without parental care under the *Convention on the Rights of the Child* (‘Convention’),⁹ which Australia has ratified, and how they intersect with, and are infringed upon by, orphanage tourism. It then considers the action that Australia has taken in an effort to curb their citizens’ potential participation in orphanage tourism and orphanage trafficking as a potential model for other countries to follow.

II Child Rights and Orphanage Tourism

Children without parental care are regarded as one of the most vulnerable groups in the world. The *Convention* establishes that children have a right not to be separated from their parents unless by a decision of a competent administrative process,¹⁰ and, if they are separated, to maintain contact with and/or be reunified with their parents.¹¹ Where children are without parental care, art 20(1) of the *Convention* states that ‘a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State’.¹²

In addition, arts 32–6 of the *Convention* protect children from forms of exploitation, including the sale of children, child trafficking and economic exploitation.

Resolutions to the *Convention*, including the *Guidelines for the Alternative Care of Children*,¹³ and the *Promotion and Protection on the Rights of the Child focusing on children without parental care*,¹⁴ adopted in 2009 and December 2019 respectively, have re-emphasised the vulnerability of children without parental care and suggest that state parties should adopt special measures to protect them.

However, despite these rights being enshrined and emphasised, it is estimated that there are approximately 5.5 million children growing up in institutional care across the world,¹⁵ with at least four out of five of these children having one or both parents alive that could raise them with support.¹⁶

The rights of children without parental care living in orphanages are directly impacted by orphanage tourism, where foreigners spend time at orphanages visiting and volunteering with resident children as part of their travel itinerary.¹⁷ Research indicates that long-term institutional care is harmful for children and that the segregated nature of institutional care in combination with 'low quality care' places children at risk of severe physical or sexual abuse, violation of fundamental human rights, trafficking for sex or labour, exploitation through orphan tourism, and risk to health and wellbeing after being subjected to medical experimentation'.¹⁸ However, rather than being regarded as infringing upon child rights, orphanage tourism has generally been regarded as a positive interaction where volunteers and tourists assist orphaned children. In recent years, links between orphanages and the recruitment of children for profit have resulted in various media campaigns by child protection organisations outlining the potential harms of orphanage tourism.¹⁹ These concerted campaigns to educate tourists of the potential harms appear to have little significant impact with a study of over a decade of tweets from 2009–19 mentioning 'orphanage tourism' finding that orphanage tourism was usually mentioned positively.²⁰

In countries such as Cambodia and Nepal, scholars have argued that orphanages are being established in locations popular with tourists to ensure that volunteering opportunities are available to meet the demand for orphanage tourism, rather than being established to look after orphaned children.²¹ In Cambodia, Reas argues 'that a major factor as to why orphanages continue to be established in Siem Reap is tourist demand and not an increase in orphan numbers'²² and that 'orphan numbers are not increasing, but tourists wishing to volunteer with children—as part of their gap-year adventures, or a day's holiday activity—need orphanages to meet this desire'.²³ Previous research in Cambodia by UNICEF indicates that orphanage tourism was a key fundraising activity for many orphanages and that most orphanages were reliant on funding from overseas donors.²⁴ Likewise, in Nepal, a report from an international non-government organisation, Next Generation Nepal, outlined that 'children have become a lucrative commodity in Nepal, and the willingness of volunteers and donors to provide funds ensures the ongoing demand for children to be unnecessarily displaced from their families'.²⁵ In contexts where children are removed from their families to live in orphanages to meet the demand for orphanage tourism, their rights to a family environment, to parental contact and even to be protected from exploitation are violated and undermined.²⁶ Through orphanage tourism, Australia is linked to the infringement of children's rights in such countries by sending volunteers, visitors and funds to support orphanages.

iii Australia's Response to Orphanage Tourism

Australia has a long and difficult history with child institutionalisation, most recently highlighted by the *Royal Commission into Institutional Responses to Child Sexual Abuse*.²⁷ Despite Australia ratifying the *Convention* in 1993 and joining as a co-sponsor on the latest United Nations General Resolution on the *Protection and Promotion on the Rights of the Child* in December 2019,²⁸ the Committee on the Rights of the Child has consistently noted Australia's poor record in dealing with children in alternative care in their concluding observations on the periodic reports to the *Convention on the Rights of the Child*.²⁹ Most recently, in 2019, the Committee on the Rights of the Child noted the increasing number of children in alternative care settings, the badly trained and poorly supported staff, and the failure to provide appropriate mental health and therapeutic services to children in alternative care settings in Australia.³⁰

- 13 *Guidelines for the Alternative Care of Children*, UN Doc A/RES/64/142 (24 February 2010 adopted 18 December 2009).
- 14 *Promotion and Protection of the Rights of Children*, UN Doc A/RES/74/133, (20 January 2020 adopted 27 November 2019).
- 15 Philip S Goldman et al, 'Institutionalisation and Deinstitutionalisation of Children 2: Policy and Practice Recommendations for Global, National, and Local Actors' (2020) 4(8) *Lancet Child & Adolescent Health* 606, 606 ('Policy and Practice Recommendations').
- 16 Corinna Csáky, 'Keeping Children out of Harmful Institutions: Why We Should be Investing in Family-Based Care' (Report, Save the Children, 2008) vii.
- 17 Cheney and Rotabi (n7) 5.
- 18 Marinus H van IJzendoorn et al, 'Institutionalisation and Deinstitutionalisation of Children 1: A Systematic and Integrative Review of Evidence regarding Effects on Development' (2020) 7(8) *Lancet Psychiatry* 703, 708.
- 19 So Young Park et al, 'A Little Blue Bird Told Me: Sentiment Change on Orphanage Tourism' (Research Paper No 55, Travel and Tourism Research Association, 2020) 3.
- 20 Ibid 7.
- 21 Martin Punaks and Katie Felt, 'Orphanage Voluntourism in Nepal and its Links to the Displacement and Unnecessary Institutionalisation of Children' (2014) 1(2) *Institutionalised Children Explorations and Beyond* 179; 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.
- 22 P Jane Reas, "'Boy, Have we got a vacation for you": Orphanage Tourism in Cambodia and the Commodification and Objectification of the Orphaned Child' (2013) 16(1) *Thammasat Review* 121.
- 23 Reas, 'Children that are Cute enough to Eat' (n 6) 83, 85.
- 24 Ibid.
- 25 UNICEF, *With the Best of Intentions: A Study of Attitudes Towards Residential Care in Cambodia* (Report, 2011) 8.
- 26 Hannah Reid, 'Orphanage Tourism and the Convention on the Rights of the Child' in Joseph M Cheer et al (eds), *Modern Day Slavery and Orphanage Tourism* (CABI, 2020) 4.
- 27 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017).
- 28 *Promotion and Protection of the Rights of Children*, 3rd Committee, 73rd sess, Agenda 70, UN Doc A/73/585 (29 November 2018) para 31.
- 29 Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5–6 (30 September 2019).
- 30 Ibid 8–9.

- 31 'Australia's Appearance Before the United Nations Committee on the Rights of the Child: Opening Statement' (Speech, United Nations Committee on the Rights of the Child, 9 September 2019) (emphasis added).
- 32 Inquiry into Establishing a Modern Slavery Act in Australia, *Parliament of Australia* (Web Page) <<https://www.aph.gov.au/modernslavery>>.
- 33 See, eg. ReThink Orphanages, Submission 23 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry to Establish a Modern Slavery Act in Australia* (2017); Cambodian Children's Trust, Submission 25 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry to Establish a Modern Slavery Act in Australia* (2017); ACFID Child Rights Community of Practice, Submission 55 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry to Establish a Modern Slavery Act in Australia* (2017); Andrea Nave and Forget Me Not, Submission 114 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry to Establish a Modern Slavery Act in Australia* (2017); ACC International, Submission 140 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry to Establish a Modern Slavery Act in Australia* (2017); Forget Me Not Nepal, The Himalayan Innovative Society, and Adara Development, Submission 155 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry to Establish a Modern Slavery Act in Australia* (2017).
- 34 Joint Standing Committee on Foreign Affairs, Defence and Trade, Commonwealth of Australia, *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* (Final Report, December 2017) ch 8 ('Hidden in Plain Sight Report').
- 35 Ibid 267 [8.159].
- 36 Linda Reynolds, 'Modern Slavery Bill Passes House of Representatives' (Media Release, Commonwealth, 17 September 2018) <<https://minister.homeaffairs.gov.au/lindareynolds/Pages/modern-slavery-bill-passes-house-of-representatives.aspx>>.
- 37 Maud de Boer-Buquichio, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, GA Res 71/37, UN GA, 71st sess, provisional agenda item 65(a), UN Doc A/71/261 (1 August 2016) 15–16.
- 38 United States Department of State, *Trafficking in Persons Report 2017* (Report, United States of America Department of State, June 2017) 296.

It is perhaps a curiosity then that Australia has taken such an interest in upholding the rights of children residing in overseas orphanages. Indeed, in the latest response to the Committee on the Rights of the Child, the Australian contingent began by stating that 'Australia is deeply committed to upholding the realisation of the full range of civil, political, economic, social and cultural rights of children both domestically *and abroad*'.³¹ In what might be considered an exemplification of these ideals, the Australian government has led the world in considering the issues of orphanage tourism and orphanage trafficking since Senator Reynolds' speech in 2016.

Most pertinently, in 2017, the issues of orphanage tourism and orphanage trafficking were one of the key focus areas of the inquiry into whether Australia should have a Modern Slavery Act.³² Evidence given throughout the Inquiry strongly linked Australian participation in orphanage tourism to the potential exploitation of children in countries such as Nepal and Cambodia.³³ The culminating *Hidden in Plain Sight Report* included a whole chapter on the issue of orphanage trafficking and made 12 recommendations concerning action that the Australian government should take to curb orphanage tourism and prevent orphanage trafficking.³⁴ This included recommendation 43 which explicitly called for the Australian Government to

introduce offences and penalties for individuals, businesses, organisations and other entities that facilitate, enable, organise, benefit from, or profit from tourist visits to overseas residential institutions, and/or who donate to or fund overseas residential institutions, that do not operate in compliance with the United Nations Convention on the Rights of the Child, the United Nations Guidelines for the Alternative Care for Children and the proposed Australian Government register.³⁵

For Reid, the Australian Government's consideration of the *Convention and Guidelines for Alternative Care* as a reference point for potential legislation and awareness raising mechanisms to combat orphanage tourism represent a significant intervention 'at the highest levels of government'.³⁶ Whilst the Australian Government has not moved to criminalise orphanage tourism as yet, the *Modern Slavery Act 2018* (Cth) has been highlighted as leading the world in considering orphanage trafficking as a form of modern slavery. In a press release regarding the Modern Slavery Bill 2018 (Cth) passing the House of Representatives in September 2018, Assistant Minister Senator, the Hon Linda Reynolds stated:

As a result of this legislation, Australia will also be the first nation in the world to recognise orphanage trafficking as a form of modern slavery. This means that a reporting entity with activities or supply chains which involve orphanages will need to assess and report on any risks relating to modern slavery in these operations.³⁷

The resultant legislation requires that reporting entities such as charities or tourism companies that are involved in orphanage tourism must report on how they mitigate the risk of the exploitation of children in orphanages.

At a global level, there has also been growing concern regarding the links between orphanage tourism and the exploitation of children. In 2016, the *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography* to the Human Rights Council highlighted that

research has provided evidence of systems in which the owners of orphanages use intermediaries to get children who look poor to orphanages, in order to satisfy a fee-based volunteering demand, generating significant profits. Traffickers lure poverty-stricken families into giving away their children, under promises of good living conditions and education. Children are then often left in poor conditions, in order to prompt foreign charity, and forced to perform activities to please foreign volunteers.³⁸

Other major international reports have also linked orphanage tourism to the exploitation of children. In 2017, the annual *Trafficking in Persons Report* published by the United States Department of State first included a link between orphanage tourism and child trafficking by outlining in the Nepal narrative that children 'are forced to pretend to be orphans to garner donations from tourists and volunteers'.³⁹ In 2018, a special interest topic of 'Child Institutionalization and Human Trafficking' was

included in the *Trafficking in Persons Report* which espoused that 'the profits made through volunteer-paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities'.⁴⁰

Most recently, the 2019 United Nations *Resolution on the Rights of the Child*, co-sponsored by Australia, specifically addressed orphanage tourism as a driver of child trafficking into orphanages and encouraged State Parties to take action against it by 'taking appropriate measures to prevent and address the harms related to volunteering programmes in orphanages, including in the context of tourism, which can lead to trafficking and exploitation'.⁴¹ Australia has taken a key role in influencing other domestic jurisdictions to consider action regarding orphanage tourism. The Lancet Commission report on institutionalisation and deinstitutionalisation of children, published in June 2020, stated that Australia has been the most successful country in responding to orphanage tourism and could provide a model for other countries to follow.⁴² One example is the Dutch Parliament which has extensively considered the mechanisms that Australia is employing to combat orphanage tourism and trafficking in an Initiative Paper led by van Hagan MP⁴³ and a subsequent Parliamentary Roundtable held on the issue.⁴⁴ Such investigations into how state parties intersect with orphanage tourism and corresponding action are crucial to ensuring that children living in orphanages do not continue to have their rights undermined and violated.⁴⁵

iv Conclusion

Australia's response to orphanage tourism and the exploitation of children in orphanages has been widely praised. Whilst it remains to be seen whether the Australian Government will seek to implement the remaining recommendations made in the *Hidden in Plain Sight Report*, it is clear that an international conversation on how contributing countries might respond to orphanage tourism has been sparked. However, what appears to be missing from this conversation so far is how affected countries where orphanage tourism is linked to aid funding and tourism income are responding. Unless the international community can resolve to work together on this issue, the impact on orphanage tourism and the exploitation of children will be limited.

⁴⁰ Ibid 22.

⁴¹ *Resolution on the Rights of the Child*, UN Doc A/RES/74/133, (18 December 2019, adopted 20 January 2020) para 35(a).

⁴² Goldman et al (n 15) 615.

⁴³ Wybren van Haga, *Een Goede Bedoeling is Niet Altijd een Goed Idee: Een Voorstel tot Bestrijding van Weeshuistorisme* (Initiative Paper 35069, November 2018).

⁴⁴ *Parliamentary Roundtable to Discuss Initiative Paper 35069 from MP Van Haga* (Roundtable, Parliament of Netherlands, March 2019).

⁴⁵ Reid (n 26) 16.