



Working with Children in Residential Care

Implications of the ACNC External Conduct Standards
for Australian Charities

About the Guidance Note

This guidance note was developed by ReThink Orphanages Australia and the ACFID Child Rights Community of Practice to assist charities with overseas activities involving residential care for children in their efforts to comply with the ACNC's External Conduct Standards (ECS).

The guidance seeks to unpack the implications of the ECS for charities involved in any of the activities listed below and provides suggestions regarding the measures that can be put in place to achieve compliance. It also contains links to key resources for charities seeking further information or support.

Residential Care is defined as:

Overnight care provided in any non-family setting, and includes:

- Orphanages
- Children's villages
- Children's homes
- Shelters and transit centres
- Institutions
- Boarding facilities
- Group homes



Activities involving overseas residential care can include:

- Running residential care facilities or services within these facilities
- Conducting programs or activities within residential care facilities
- Funding residential care facilities run by a partner or third-party service provider
- Facilitating volunteering in or visiting residential care facilities
- Managing projects and handling funds of other incorporated or unincorporated entities who run any of the above activities within residential care facilities
- Sending missionaries or short-term teams to visit or work within residential care facilities



Background to the External Conduct Standards

In July 2019 the Australian Charities and Not for Profit Commission introduced a new set of regulations called the External Conduct Standards (ECS). Comprised of a set of four standards, the ECS were developed to improve transparency and public confidence by requiring charities to take steps to ensure:

- ✓ Funds and resources are used for legitimate charitable purposes
- ✓ Activities and services assist legitimate beneficiaries
- ✓ Vulnerable individuals are protected from harm, abuse and exploitation in the context of charities' overseas activities.

The ECS are applicable to all charities who operate or fund overseas activities, irrespective of whether these activities are a major or minor component of the charity's overall work.

How are the ECS relevant to activities involving children in residential care?

Whilst all children are classified as 'vulnerable individuals' under the ACNC's definition, the ECS recognise a heightened risk exists for certain groups of children, and specifically mention children in residential care.

We often assume that residential care settings, including orphanages, are inherently safe places for children. Places where children go to escape harm, abuse, neglect, exploitation and to receive care. However, the global evidence paints a different picture and shows that caring for children in residential care settings, even well-run ones, can cause harm due to the effects of institutionalisation. Growing up in an orphanage can also expose a child to an increased risk of abuse and exploitation. This is due to a number of factors including the lack of regulation in many countries to ensure minimum standards are met and the popularity of orphanage volunteering and funding.

In recognition of these risks, Australian charities involved in running or supporting overseas residential care services are now expected to put in place comprehensive measures to prevent harm and safeguard against abuse and exploitation.

Whilst charities operating overseas activities involving residential care services must comply with all four ECS, there are two standards with a direct bearing on how these activities are designed, managed and conducted. These are:

Standard One:

[Activities and Control of Resources](#)

Standard Four:

[Protection of Vulnerable Individuals](#)



1.

Unpacking the implications of the Standards for Residential Care related activities

Standard One:

Activities and Control of Resources

Summary: Standard One requires charities to have sufficient controls in place to ensure their use of resources and activities are consistent with their charitable purpose. This includes ensuring partners for whom the charity raises funds, use those funds in a manner consistent with the charity's purpose.

As a part of ensuring consistency, Standard One requires charities to comply with a number of Australian laws, including those that relate to slavery, servitude, trafficking and sexual offences against children.

How is Standard One relevant to activities involving residential care?

Standard One is designed to prevent charities from:

1. operating with the purpose of making a profit; or
2. partnering with or funding overseas organisations who are primarily seeking to profit; and/or finance unlawful activities, including the exploitation of beneficiaries.

With respect to overseas residential care services, this would relate to 'orphanages' set up with the purpose of profiting from foreign funding, including from the fees and donations from orphanage volunteers. This is often referred to as the 'orphanage business model' or 'orphanage industry' and typically involves recruiting children from vulnerable families into residential care in order to get access to foreign funding in the form of child sponsorship funds, fees and donations from volunteers and teams, and funding from partnering charities. Funds may be used for personal profit, or in some cases, to support other activities that are more difficult to raise funds for. Churches or Bible schools are common examples.



Australian charities whose primary role is fundraising for overseas residential care services or sending teams or volunteers to work with orphanages, are most exposed to this risk. Charities may be told that the children in care are orphaned or have been rescued and require funding so that they can be cared for in the orphanage. Often their stories are embellished or falsified to elicit greater sympathy and therefore funding. It is also not uncommon for orphanages to have registers which include the names of children who no longer reside at the orphanage or never did, yet for whom directors claim sponsorship funds. Sometimes staff or directors add the names of their own children or relatives to the orphanage register and seek funding for these children. These are examples of what Standard One refers to as 'illegitimate beneficiaries' and a way for further profiteering.

When orphanages operate as businesses, children are typically brought into care unnecessarily and/or kept there for longer periods of time than required, with no regard for the child's rights or the harmful impacts of institutionalisation on their development. In more extreme situations, children can be trafficked into orphanages by orphanage directors or traffickers who act as 'middle men'. Once in the orphanage, children are exploited, usually for the purposes of orphanage tourism, labour and/or sexual exploitation.

The Australian laws that charities are required to comply with under Standard One include the Modern Slavery Act (Cth), which recognises orphanage trafficking as a form of modern slavery and orphanage tourism as a risk factor for orphanage trafficking. It requires reporting entities with any involvement with orphanages to identify risks in their supply chains and operations and take steps to mitigate these risks.



Ways to comply with Standard One:

To illustrate compliance with Standard One, charities should:

- Conduct thorough due diligence assessments on all partners who run residential care programs or conduct their activities in residential care facilities. This will enable charities to ensure they only work with credible partners who are registered and licensed and who demonstrate sufficient will and capacity to conduct activities appropriately. A link to an example of a due diligence assessment tool specifically designed for this purpose can be found in the helpful resource box below.
- Put in place formal partnership agreements with all partners. Agreements should outline the terms, expectations, standards, code of conduct and roles and responsibilities of both parties. Agreements could explicitly cover the designation of funds and include restrictions on volunteering to safeguard against the risks associated with orphanage volunteering and tourism.
- Ensure proper financial controls are in place, including ensuring bank accounts and assets are not in individuals' names, more than one signature is required to withdraw funds, regular financial reports are required, including periodic audited reports. This could be built into the partnership agreement or be captured in a financial management policy.
- Ensure the admission procedures for children into the orphanage are strictly in accordance with the national gatekeeping policy or mechanisms or the Guidelines on the Alternative Care for Children, where domestic policies are yet to be developed.¹

¹ Gatekeeping refers to the process and mechanisms designed to prevent unnecessary recourse to alternative care. It includes assessments to ensure children receive services most appropriate to their needs and residential care is not used as a first line response to all child welfare and protection needs. For more information see Making Decisions for the Better Care of Children in the helpful resource section above.

- Ensure funding is allocated to support children in families, including family-based alternative care. This upholds children's rights to family-life and prevents funding models from incentivising the long-term or overuse of residential care when it is not in children's best interests.
- Ensure there is a robust child safeguarding policy in place, with strict child safe recruitment and employment procedures included and clear mechanisms for reporting allegations and incidents. This must include a means by which children can report concerns or allegations of abuse or misconduct to someone other than staff or directors and in a way that does not create a risk of reprisal.

Helpful Resources:

[Partnership Due Diligence Assessment](#)

[Orphanage Check List](#)

[Oxfam child safeguarding toolkit](#)

[Volunteers check list](#)

[Making Decisions for the Better Care of Children - Gatekeeping paper](#)

[Families not Orphanages](#)

[Protecting Children in Short-Term Missions](#)

4.

Standard Four:

Protecting Vulnerable Individuals

Summary: Standard Four relates to protecting vulnerable individuals who are beneficiaries of an overseas activity or service run or supported by an Australian charity, or who are engaged to provide a service or deliver an overseas activity.

Charities are expected to operate and conduct their activities in ways that minimise the risk of harm, abuse and exploitation. The more significant the risks, the more comprehensive the measures put in place to mitigate those risks must be.

How is this relevant to activities involving residential care?

Children in residential care are a highly vulnerable group of children. Their vulnerability not only stems from events or factors that may have led to their admission into care (poverty, disadvantage, family separation or crisis, disability, recruitment, abuse etc). They are also considered vulnerable on the basis of being in residential care. This is because residential care is known to have detrimental impacts on children's cognitive, social, emotional and psychological development- even when facilities are well run. These harms stem from separation from family and community and the institutional nature of care in residential settings. As these harms are inherent to residential care, they cannot be entirely mitigated by high standards of care alone. It is for these reasons that residential care should only ever be used in situations of last resort and for the shortest duration possible.

This means protecting children from harm in the context of residential care needs to take into account a range of protections, including:

1. Protecting children from unnecessary family separation by working to strengthen families and ensuring services that address issues related to poverty, access to education or disability for example, are made accessible to children in the community and access to services is not contingent upon admitting children into residential care.
2. Protecting children from unnecessary admission into residential care so children are not exposed to the risk of harm associated with residential care when there are more suitable ways of providing support or meeting their needs, including through family-based alternative care.
3. Protecting children from long-term placements in residential care, ensuring that separation from family is for the shortest duration possible and preparation for reintegration commences as soon as a child enters care.
4. Protecting children whilst in care from:
 - a) abuse or exploitation at the hands of staff and management, other resident children, volunteers and other stakeholders, and people in the broader community.
 - b) Developmental and psychological harm by ensuring the environment is as close to family setting as possible (small group homes rather than institutions) and that the effects of separation from family and institutionalisation are not compounded by harmful practices such as orphanage tourism and volunteering.
5. Protecting children from harm when they leave care, by ensuring they have opportunities to develop life skills to overcome the hyper-vulnerability that results from institutionalisation and prepare children and young people for reintegration and/or independent living.

Standard Four also specifically states that Australian charities must ensure their overseas activities comply with the relevant minimum standards as set out in the laws of the host country. For activities involving residential care, the relevant minimum standards include:

- The country's minimum standards for residential care- which outlines the comprehensive standards all residential care service providers must meet in accordance with children's rights.
- The country's policy on alternative care -outlines the range of alternative care options, the circumstances under which they can be used, the decision-making process that governs referral to alternative care services, the mandates of authorised bodies and the limitations around the use of residential care (last resort and temporary).

The policy on alternative care and national minimum standards of care will be country specific and form the basis of the regulatory system that residential care service providers must comply with by law. The policy and regulatory frameworks can be subject to rapid changes in countries undergoing care reforms. Therefore, it is important to conduct regular reviews to ensure ongoing compliance.

Standard Four and International Law

Standard Four is also purposed to assist Australia meet its obligations under international conventions that Australia has ratified. The ECS explanatory materials specifically mentions the:

- [Convention on the Rights of the Child](#)
- [Convention on the Rights of Persons with Disabilities](#)
- [Guidelines for the Alternative Care of Children](#)
(non-binding, however endorsed in a UNGA resolution adopted in 2009)

These Conventions and the Guidelines have a direct bearing on overseas activities involving residential care. Both conventions establish a right to family-life for all children, including children with disabilities, and in order to protect this right and to prevent developmental harm associated with institutionalisation, impose very strict limitations on the use of residential care.

The Guidelines on the Alternative Care for Children provide guidance regarding the State's binding obligations under the UN Convention on the Rights of the Child to prevent family separation and to provide suitable alternative care for children when necessary. National standards typically draw from the Guidelines, and where national standards are yet to be established, the Guidelines are the international norms that should be used to guide practice and for standard setting.

Ways to comply with Standard Four

To illustrate compliance with Standard Four charities should ensure:

- The residential care facility they run, fund, support or partner with is registered and duly licensed according to law.
- Residential care activities are fully compliant with the alternative care policy and minimum standards of care.
- A robust gatekeeping policy or mechanism is in place, that includes:
 - A requirement for child and family assessments to be carried out by competent and authorised professionals and for decisions to be made in the best interests of the individual child and free from discrimination.
 - A means of directing children towards the type of care most appropriate to their needs and with priority given to family-based care (through case management and/or referral networks).
 - A requirement for admissions into alternative care to be approved or mandated by the competent authorities.
 - A prohibition on active recruitment of children for placement in residential care.
 - A requirement to conduct regular reviews of all children's placements to assess for ongoing necessity and suitability and to work towards reintegration.
- A reintegration policy is in place which requires organisations to have case management and time bound reintegration plans in place for all children.
- A child safe visiting and volunteering policy is in place that includes a prohibition on orphanage tourism and volunteering.²
- Children are involved in making decisions, where those decisions affect their lives.
- Aftercare services are provided, or appropriate referrals made, to ensure children and young people leaving care are supported to integrate safely and successfully.
- A child safeguarding policy is in place (as previously covered under Standard One) and implemented is subject to monitoring and evaluation.

In the case of partnerships with third parties, the above measures should be incorporated into the conditions for partnership and stipulated in the partnership agreement. These terms become the basis for regular monitoring to ensure ongoing compliance.

² Acknowledgement: ReThink Orphanages Australia and the Child Rights Community of Practice recognise the unique position of AVI who utilise skilled long-term volunteers to support deinstitutionalisation. Placements of this nature only take place where an Australian volunteer assignment is specifically nominated to support an RCI transition (de-institutionalisation), where the volunteer has the necessary qualifications and experience, and where the partner organisation expresses its stated commitment to transition and shares evidence which supports this commitment.

Helpful Resources

[Moving Forward Handbook: Implementing the Guidelines for the Alternative Care of Children](#)

[Country laws and policies can be found on the Better Care Network Country Pages](#)

[Better Care Network Toolkit](#) – includes examples of assessment forms, standards, care plans and reintegration planning tools

[Rethink Orphanages](#) - information about volunteering and support of orphanages

[DFAT Smart Volunteering Campaign](#)

[Guidelines on the Alternative Care of Children](#)

[UN Convention on the Rights of the Child](#)

For more information or assistance contact
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