



Submission to

*Royal Commission into Institutional Responses to Child Sexual Abuse*

**Consultation paper:**  
Best practice in responding to complaints of  
child sexual abuse in institutional contexts

26 April 2016

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## Part One: INTRODUCTION

In March 2016, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) released a consultation paper entitled, *Best practice principles in responding to complaints of child sexual abuse in institutional contexts*.

With reference to policy and research work, case studies and private sessions, the consultation paper asserts a lack of effectiveness and accountability in institutional processes for responding to concerns about child sexual abuse over a long period. Noting that the practice principles will be of interest to a range of institutions of varying sizes and undertaking different child-related activities, the Royal Commission is seeking feedback on the principles and their implementation.

PeakCare Queensland Inc. (PeakCare) welcomes the opportunity to make a submission in response to the consultation paper.

## Part Two: ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare is a peak body for child and family services in Queensland. Across Queensland, PeakCare has 61 members that are a mix of small, medium and large, local and statewide, mainstream and Aboriginal and Torres Strait Islander non-government organisations that provide services to at risk and in care children and young people, their families and communities. In addition, PeakCare's membership includes a network of 26 individual members and other entities supportive of PeakCare's policy platform about the safety and wellbeing of children and young people, and the support of their families.

PeakCare members undertake a wide range of functions with children, young people, family members, foster and kinship carers, and the broader community. Members offer services and programs that are universal, preventative, targeted and / or intensive in nature, seeking to work in partnership with service users and communities. Many PeakCare members provide out of home care to children and young people who, for short or long periods of time, are unable to live with their parents. This occurs in carers' homes (eg. foster and kinship care) and non-family based settings such as residential care and supported independent living settings.

PeakCare's focus in this submission is on out of home care for children and young people who are subject to statutory child protection intervention or where parents have agreed to an out of home care placement, and adults who as children were removed from parental care or relinquished by their parents and resided in institutional settings.

## Part Three:

### FEEDBACK IN RESPONSE TO THE CONSULTATION PAPER

#### 1. Overarching comments

In considering best practice principles, PeakCare reiterates the Royal Commission's awareness that children<sup>1</sup> in institutional settings are not an homogenous group and characteristics such as cultural, religious and ethnic background, age, sex, gender, location, and ability should be considered in the design, implementation and review of processes for responding to allegations and reports of child sexual abuse. These differences are as true for adults who as children were abused in and by the institutions that were responsible for caring for them, and children who currently experience or have exited out of home care.

The following comments raise concerns about elements of proposed processes and guidance, and areas on which comment was specifically invited.

#### 2. Terminology

PeakCare has concerns about the terminology and definitions that underpin the concepts that the best practice principles seek to support. Of greatest concern is our reservation about using the term 'complaint' to describe allegations or reports of contemporary or historical child sexual abuse. The term is generally understood to cover dissatisfaction with a service including the action or inaction of individuals or groups of persons associated with the service. It is indeed curious to conceive of sexual abuse as a 'complaint' in the way it has been used within the consultation paper, especially as allegations, reports, suspicions, concerns or disclosures relating to the sexual abuse of children subject to statutory child protection intervention and placed in out of home care require formal reporting to the statutory child protection authority and very likely to the police.

We note that the consultation paper cites (page 15) the Queensland child protection legislation in respect to licensed care services (note these should not be referred to as *childcare* services) to keep records about complaints. The provision (section 7(d), *Child Protection Regulation 2011* (the *Regulation*)) requires care services (i.e. out of home care services licensed under the *Child Protection Act 1999* (the *Act*)) to keep records about any written complaint the licensee receives about the provision of services to the child and any action taken in relation to the complaint. Examples of complaints in out of home care settings include preferences about meals, lack of assistance with transport, or dissatisfaction with a staff member's decision. That legislative provision is separate to the requirement to keep records under section 7(e) of the Regulation about breaches of the standards of care (s.122, the *Act*) or the requirement on employees of licensed care services to report reasonable suspicions that a child in care has suffered, is suffering, or is at unacceptable risk of suffering significant harm caused by physical or sexual abuse (s.13F, the *Act*). The written

<sup>1</sup> The terms 'child' and 'children' have been used and should be read as inclusive of children aged 0 to 17 years.

information in respect of a mandatory report to the chief executive is prescribed in the *Act* (s.13G) and the *Regulation* (s.10).

This information is provided to illustrate the difficulties and inappropriateness of referring to historical and contemporary allegations of child sexual abuse in out of home care settings as a complaint. This is not to say that best practice principles that apply in responding to complaints are inappropriate or unwarranted, only that the term ‘complaints’ should not be used in respect to child sexual abuse.

### *‘Complaint of child sexual abuse’*

The definition of ‘complaint of child sexual abuse’ refers to adults perpetrating sexual abuse and children with sexually harmful behaviours. Notwithstanding PeakCare’s concern about the use of the term complaint, we suggest that the supporting text be amended to be explicitly inclusive of the broader cohort of current and former residents of out of home care. That is, the definition should be inclusive of adults who as children were sexually abused in institutional care, as well as children currently placed in out of home care and children who are not yet adults but have experienced out of home care raising concerns about sexual abuse in institutional care.

### *‘Investigation’*

A definition of ‘investigation’ (page 3) is included. This description and subsequent content about conducting investigations refer to legislative, contractual or other requirements to report or to conduct an investigation in a prescribed manner. In reflecting on the description, we are thinking about the diversity of institutional settings in which children are at risk of sexual abuse or of sexually harmful behaviours, the objectives of accountable and effective responses, and the plethora of legislative, contractual, administrative and other requirements on organisations providing out of home care across Australia. It is suggested that not only should there be mention of actions *before commencing* an investigation, the content should be expanded to refer to whether the organisation can conduct an investigation, the nature of that investigation, and consideration of timing and sequencing of actions with actions by police and / or the statutory child protection agency. This is suggested as a cautionary measure and to highlight considerations to avoid compromising criminal or other investigations. Taking account, in the first instance, of the complexity of intersecting regulatory frameworks will support transparent, accountable and effective responses to children and their families in the short and longer term. The licence or accreditation under which the out of home care service operates (eg. in Queensland) and meeting industrial obligations to the accused are two aspects that can be jeopardised.

### 3. Responding to complaints of child sexual abuse

The consultation paper notes examples of a number of actions an institution should take when it receives information about child sexual abuse (page 4). Generally, the sequence and content are helpful.

In the area of ‘investigation’, referring to the opportunity, where appropriate, for the subject child or adult (or their advocate) to be involved in developing the investigation plan or process would be valuable. Mention should also be made about review rights and informing the subject child or adult about these. In the area of ‘maintain records’, it would be helpful to explicitly state that the records are not limited to the ‘investigation process’. Records should also be kept about identification, risk assessment, and external reporting and conferral with other agencies.

### 4. Complaints handling processes and obligations

#### *General complaint handling and investigation guidance*

A table of features (page 12) recognised as essential to good practice by Ombudsmen is included. PeakCare is concerned about using the word ‘quickly’ to describe responsiveness and feedback. A preferred term, and one that is used elsewhere in the consultation paper, is ‘promptly’ as it does not imply an action taken in haste, rather one that is considered and takes account of the specifics of the matter in hand and the planned response/s.

‘Accountability’ (page 12) refers to the process being open to scrutiny by clients, staff and review bodies. To be inclusive of the range of non-government organisations, mention should also be made of management (i.e. not just staff) and governance bodies, such as boards and management committees.

The ‘right of review’ (page 12) refers only to internal and / or external review of the outcome. It is important, and especially so when responding to allegations or reports of contemporary or historical child sexual abuse, that there be the opportunity to seek review of the investigation process, that is, how the organisation went about, or didn’t go about, investigating to arrive at the outcome.

#### *Legislative and regulatory obligations and responsibilities*

There are a number of organisations providing out of home care in Australia that operate in two or more Australian jurisdictions, some of which are national and international not-for-profit and for-profit organisations. In addition to the raft of legal requirements on these organisations, the impost of each jurisdiction’s varying administrative requirements should also be recognised.



### *Reporting to other agencies – Mandatory reporting to child protection agencies*

The consultation paper refers to obligations to mandatorily report risk of harm to a child (page 13). PeakCare is curious as to why these obligations are framed as *future* risk when, as in Queensland, mandated reporters are bound to report harm or suspected harm, or risk of significant harm. That is, they are required to report about the past, as well as the future. This comment is made as it goes to PeakCare's concern that allegations or reports of child sexual abuse are not complaints and investigation of the allegation by the institution must be compatible with the police's and / or the statutory child protection agency's investigation.

### *Best practice principles*

Six principles are asserted as underpinning strong and effective practice in responding to allegations or reports of child sexual abuse. In addition to comments made above about the importance of prompt responses (as opposed to quick responses); the opportunity for the subject child or adult and / or their advocate to participate in planning the investigation; and that the review process should include the right to seek review of the process as well as the outcome, we have the following concerns.

The first practice principle refers to institutional culture having regard for 'the inherent vulnerability of children in their care'. PeakCare is of the view that this understates other significant realities that contribute to children and young people's vulnerability. There are indeed individual factors associated with, for example, the child's age, race, religion, physical or cognitive ability. There are also systemic and structural factors, all of which are at play, and therefore require attention and even regulation, to address.

The third principle addresses the accessibility, accountability and responsiveness of the process. It is suggested that not only should the process be simple, it should support children, adults and / or their advocates to raise the matter in a range of ways. The 'support' being provided should be the person's choice, and internal or external to the institution.

The fifth principle addresses training. Again, the brevity of the description belies other aspects about which training should be provided. These could draw on the elements asserted for child safe organisations and licensing and accreditation frameworks for out of home care. Particular examples include preventing and identifying 'child sexual abuse' in institutional settings, responding in ways that demonstrate cultural integrity, and understanding thresholds and reporting (i.e. at what point is an allegation or report of sexual abuse a reportable matter internally and externally).



### *Suggested topics of a complaint handling policy*

The suggested topics in a complaint handling policy (page 18) include guidance on who within the institution should be told. Little is however included about advising one of the most important stakeholder groups - the child's parents / guardians / carers. Guidance should be included on this matter, as well as about the ways in which the child's family can be involved in any investigation, even if this requires consultation with and / or advice from the statutory child protection agency and / or police because of their investigations into the matter. As stated above, PeakCare is also of the view that the support available to a child should be of their choice.

In providing guidance about what to do when reporting to the police, advice should be obtained not only about whether the organisation can or should conduct an investigation, but also the nature and scope of any investigation.

In communicating with stakeholders, guidance should be provided about how and how often communication should occur. Because the person who made the report may not be the child, the subject child and their parent / guardian / carer should be noted.

## 5. Implementing the principles

On page 20, the consultation paper states that a strong child safe culture is at the heart of good complaint handling. While that may be true, it is important to make mention of a key protective (child-focused) mechanism for any child and especially children and young people in out of home care. That is, making sure each child has at least one significant adult in whom they can confide, a network of professional and non-professional people in their community of care, regular case reviews, and support for strong connections to family, culture and community.

When referring to guidance about how to interact with a child who discloses sexual abuse (page 21), 'listening' to the child is not actually said in the dot points. Nor do the dot points mention making sure the child is safe and feels safe, things about which the child's views should be sought. Similarly, taking actions to ensure the child's immediate and short term physical, medical, emotional or other needs are not mentioned.

## 6. Provision of support

Points are included about the assistance and support to be provided to victims, survivors, the accused and others. In the first instance, it should be stated that all of these people should be asked what they want to happen in respect to formal and / or informal supports. It is suggested that legal and / or industrial advice and representation be included and that support persons are by choice (not 'offered'). It is also suggested that the points such as 'changing the victim's placement' and 'removal of other children in the care of the accused' be qualified such that this eventuality is not

considered automatic or inevitable. A timely review by the statutory child protection agency (or non-government organisation to which the child's guardianship may have been transferred) should inform any decisions about changing a child's living arrangements.

## 7. Managing the media

It is assumed that the references to 'protecting' children (page 30) include the child or children's status as a child in the care of the State. Consideration must also be given to the timing and sequencing of contact with media and communications with other children, parents and others.

## 8. Induction and training for staff and volunteers

In addition to training about handling complaints and the organisation's code of conduct, it is important that the messages from this training are clearly connectable for staff and management to training about preventing child sexual abuse and reporting obligations. Training for specialist staff should specifically include interviewing skills *with children* and liaising with parents and family members of the child/ren.

## 9. Particular matters on which submissions are sought

The Royal Commission also sought comment about reportable conduct schemes. While the consultation paper heavily relies on references to New South Wales arrangements, a range of mechanisms exist for monitoring different professional groups in other jurisdictions. PeakCare assumes that prior and forthcoming submissions by the statutory child protection agency, other state government agencies and professional bodies (eg. teacher registration boards) will include details about how past conduct that has or has not been 'substantiated' is taken into account in decisions about, for example, staff associated with residential care services, and foster and kinship carers.

On the question of advice and support for institutions, PeakCare as a peak body for current and some former providers of out of home care services in Queensland, would be pleased to play a role in providing advice and support to member agencies and other community based providers of out of home care. Enhanced resources would however be required to undertake this role.



## Part 4: CONCLUSION

PeakCare appreciates the opportunity to make this submission and looks forward to further information and research findings from the Royal Commission into Institutional Responses to Child Sexual Abuse.