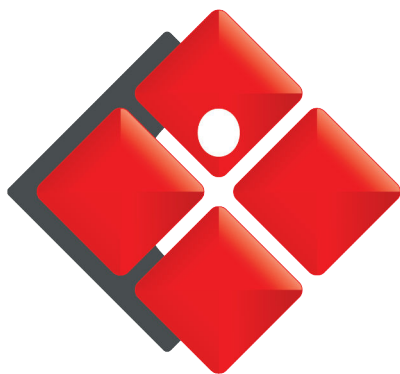


Submission to the  
Department of Child Safety, Seniors and  
Disability Services

**Absence of available physical  
and sexual abuse insurance for  
out-of-home care and youth  
homelessness service providers**

4 December 2023



**PeakCare**  
Queensland Inc.

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## INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the draft design principles and key considerations intended to support Queensland's long-term solution to the lack of available physical and sexual abuse (PSA) insurance for out-of-home care and youth homelessness service providers.

## ABOUT PEAKCARE

PeakCare is a not-for-profit peak body for child and family services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has over 50 member organisations which include small, medium and large, local, state-wide and national non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster care, kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered supporters also subscribe to PeakCare. Supporters include individuals with an interest in child protection and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

## ABOUT PEAKCARE'S SUBMISSION

One of the major challenges faced by the non-government out-of-home care and youth homelessness services sector is the complete market failure in relation to PSA insurance cover. This matter first came to light in early 2021 and since then, much work has been undertaken to examine the issue and explore possible solutions. This work resulted in a Final Report produced by Finity Consulting which was handed to a dedicated Inter-Jurisdictional Working Group (IJWG) on physical and sexual abuse insurance in February 2023.

PeakCare would like to acknowledge the important role the Department of Child Safety, Seniors and Disability Services (the Department) has provided throughout this process, in particular through the valued leadership of Ms Helen Missen, Executive Director, Strategic Policy and Legislation.

In April 2023, PeakCare as one of the Queensland representatives on the Non-Government Advisory Group (NGAG) to the IJWG wrote to the Hon. Leanne Linard MP to seek support and action on the following two key asks:

- The out-of-home care and youth homelessness services sectors simply could not sustain a solution for cover other than one where there is coverage for at least \$20m annually, which many NGOs previously were able to access. Any attempt at a solution less than this would provide an unacceptable degree of risk to the sector and would not solve the fundamental problem.
- Much broader sector consultation needed to occur with the benefit of the full availability of the research and findings produced by Finity Consulting.



Following receipt of this correspondence and the publication of the Final Report produced by Finity Consulting, the Department commenced a consultation activity in partnership with PeakCare. This submission reflects the views of child and family sector organisations who provided feedback to PeakCare as part of the consultation process.

*Note: consultation activities undertaken by the department to date have focused on non-government organisations providing out-of-home care services with separate consultation occurring for youth homelessness services.*

## **PEAKCARE'S SUBMISSION**

This submission responds to each element of the proposed design principles based on the submission template issued by the department. General considerations are also included based on feedback provided to PeakCare and the issues and opportunities highlighted by PeakCare through participation in the Non-Government Advisory Group to the IJWG.

*Note: when the term sector is used in this submission, it refers to both the out-of-home care services sector and youth homelessness services sector. PeakCare also acknowledges the term out-of-home care is a non-preferred term for many non-government organisations and services users. It has been retained in this submission to ensure alignment with the Final Report by Finity Consulting and to ensure alignment with the distinct scoping of PSA insurance products for out-of-home care services previously available in the market.*

### **Overview of the design principles**

#### **Do sector organisations currently have PSA insurance?**

The majority of sector organisations reported not being able to access PSA insurance which is consistent with advice provided by industry experts, insurance underwriters, and the findings of the Final Report by Finity Consulting.

While some organisations were able to secure a level of PSA insurance, they reported significantly increased premium costs, limitations placed on coverage that did not previously exist, and significant reductions in liability limits.

One organisation advised their 2023-24 renewal resulted in a 75 per cent reduction in their liability limit and a 200 per cent increase in their annual premium compared to the previous year.

#### **Have sector organisations previously held PSA insurance?**

The significant majority of sector organisations reported always having held PSA insurance with some noting that their level of cover, and the type of cover had varied over time.

A minority of organisations noted that their reasons for not having previously held this type of cover was that it was not mandatory. This is a point of difference which is important to consider when comparing coverage between jurisdictions given the differing requirements for organisations to hold this type of insurance based on the jurisdictions funding requirements.



## Design principles – Participation

While there was strong support from the sector for a mandatory requirement for funded organisations to hold an appropriate level of PSA insurance cover, there was a mixed response to the proposal of mandatory participation in a Government-funded scheme.

The key focus of those organisations who did not support a mandatory Government-funded scheme was that it would prevent opportunities to source alternate insurance cover from a potentially revitalised market in the future at a more cost effective rate. Some organisations also noted that a mandatory Government-funded scheme would compromise existing discretionary mutual fund arrangements that may be in place between providers including those that operate across multiple jurisdictions.

### Recommendation:

1. PeakCare recommends the Queensland Government mandate a requirement for funded sector organisations to hold an appropriate level of PSA insurance which can either be sourced from a government-funded scheme or via the open market, where possible.

## Design principles – Eligibility

All sector organisations reported that it would be either very feasible or feasible to demonstrate 'reasonable endeavours' in seeking to obtain commercial insurance and supported the proposed evidence which was proposed to be a board approved declaration with accompanying confirmation from the organisations insurance provider or broker.

Organisations highlighted that this requirement could become burdensome in the absence of clear evidentiary requirements and a process for providing this.

### Recommendation:

2. PeakCare recommends the Queensland Government establish standardised requirements, templates, and processes to be followed by sector organisations who are seeking to leverage the Government-funded scheme.

## Design principles – Scope of eligible services

The significant majority of sector organisations did not support the proposed scope of PSA insurance which limited cover to overnight accommodation based services such as family and non-family based care. Key reasons for this included the integrated nature of child and family service delivery and integrated care models which rely on ancillary and support services that also create a PSA risk. There were also concerns raised about the possible expansion of the market failure to impact on related services such as early childhood education and care services, schools, adventure-based therapeutic services, and transport services.

An important consideration highlighted by organisations was how a potential Government-funded scheme with a broader service remit would be able to moderate premiums based on the associated risk exposure of each service type.



**Recommendation:**

3. PeakCare recommends the Queensland Government expand the scope of PSA insurance to include a broader range of direct care and supervision services for children and young people. This includes any services funded by Government where a non-government organisation is required to provide for the direct care and/or supervision of a person under 18 years of age. This insurance should be available irrespective of whether the funded service is providing for the direct care of person under 18 years of age for a discrete or extended period or whether the services is provided by a staff member or volunteer of the funded non-government organisation.
4. PeakCare Recommends the Queensland Government establish consistent and transparent mechanisms for moderating insurance premiums to reflect the level of associated risk of each service being covered.

## Design principles – Basis of Cover

The majority of sector organisations supported the principle that retroactive cover should be available if an organisation previously had claims-made cover for PSA risks, or could demonstrate they made reasonable endeavours to obtain commercial insurance.

Some organisations highlighted the need to consider and appropriately mitigate for circumstances where historical occurrence-based cover was provided through a provider that is no longer operational. This is particularly important considering recent public concerns raised around the ongoing financial viability of some insurance providers given the increasing cost of historical exposure.

Some organisations highlighted the need to consider and appropriately mitigate for circumstances where they previously provided services under a claims-made policy and have since ceased to deliver that service but still provide other related services which do not have the same risk profile.

**Example** - A non-government organisation ceases to provide non-family-based care services (residential care and supported independent living) and continues to provide funded support services to support family-based care arrangements (foster and kinship care), intensive family support services, transport services and other ancillary therapeutic support services e.g., mentoring, family support, counselling etc.

Given each remaining service has a lower PSA risk profile than the ceased non-family-based care service, there is a requirement for a future government-funded scheme to be able to ensure an appropriate level of cover for ongoing services while ensuring historical exposure is also appropriately considered for services which have recently ceased but still create a risk of future claims.

Almost all organisations consulted indicated the absence of retroactive cover would significantly impact on the organisations ability to continue providing direct child and family services.

*Important note: PeakCare has previously facilitated a series of information sessions with sector organisations and Board representatives focused on awareness raising around the risk of operating child and family services organisations without appropriate insurance. These risks included the individual liabilities that may be imposed on Board Members and chief executives under ACNC Governance Standard five.*



**Recommendation:**

5. PeakCare recommends the Queensland Government ensures an appropriate level of retroactive cover is a standard inclusion in the Government-funded scheme.
6. PeakCare recommends the Queensland Government undertakes detailed modelling on a range of feasible operational scenarios to ensure the long-term scheme approach does not unintentionally disadvantage organisations.

## Design principles – Limits of cover and deductibles

While feedback on the limit of liability was mixed, PeakCare's position is that a limit of liability (inclusive of legal costs) of \$20 million per policy year per PSA claim and \$20 million in the aggregate is required. This feedback is consistent with that previously proposed by the Non-Government Advisory Group to the IJWG and reflects the level of cover available to sector organisations prior to the market collapse.

PeakCare is also concerned with the proposed deductible amount of \$10,000 per claim for organisations with an annual turnover of less than \$20 million and \$50,000 per claim for all other organisations. While we accept the provision of a deductible, the model currently proposed does not reflect the variability in size and risk exposure of organisation working in the sector. It also does not provide clarity on how organisations with other revenue sources, including interjurisdictional revenue sources, will be treated from a deductibles perspective e.g., will it be calculated on total organisational annual turnover or specifically on related service funding streams only. This position is echoed by the majority of organisations consulted who reported the proposed deductibles as being too high and lacking nuance to reflect the diversity of the child and family sector.

The proposed model also does not account for differences in organisational risk management practices including the implementation of child safe standards and safeguarding processes. Given the upcoming implementation of child safe standards in Queensland, there is an opportunity to draw on these national principles to underpin an improved and more nuanced approach to risk based deductibles calculations.

**Recommendation:**

7. PeakCare recommends the Queensland Government increase the limit of liability (inclusive of legal costs) to \$20 million per policy year per PSA claim and \$20 million in the aggregate.
8. PeakCare recommends the Queensland Government develops a more sophisticated deductibles approach to better reflect the broad range of sector organisations providing child and family services. This approach should factor in potential risk exposure including the number of children supported and number of staff, the types of services provided, the total funded amount for the service being provided etc.

## Design principles – Participation cost

The significant majority of sector organisations supported the recommended approach for the payment of an insurance premium or indemnity fee on the basis that it would be partially funded by the Queensland Government. This position is grounded in the significant financial constraints being faced by all sector organisations compounded by increasing service costs which continue to exceed indexation rates.



**Recommendation:**

9. PeakCare recommends the Queensland Government establishes an insurance premium or indemnity fee that is charged on a partial funding basis.

## Design principles – Pricing Structure

Almost all sector organisations agreed the participation cost should be proportionate to the volume of outsourced services and associated risks. It was agreed this should be expressed as a percentage of Queensland Government funding received by the organisation for the provision of the service and the rate should vary depending on the risk profile of the service type.

Some organisations highlighted the pricing structure could be used to positively incentivise improved risk management practices in a similar way to what is seen in other insurance markets.

**Recommendation:**

10. PeakCare recommends the Queensland Government establishes a pricing structure based on the approach recommended in the Final Report by Finity Consulting.
11. PeakCare recommends the Queensland Government considers how this pricing structure could be utilised to positively incentivise sector organisations to improve their risk management practices.

## Design principles – Scope of Cover Across Jurisdictions

While PeakCare considers all design principle elements are important when considering national consistency, the following order reflects the feedback of consulted sector organisations:

1. Limits of cover
2. Scope of eligible services
3. Basis of cover
4. Eligibility requirements
5. Pricing structure
6. Participation
7. Participation costs
8. Deductibles.

## A Nationally Consistent Approach

A key purpose of establishing the IJWG and commissioning the Finity Reports was to facilitate a nationally consistent response to the risk of catastrophic service failure due to the collapse of the PSA insurance market.

It is PeakCare's view that if the concerns of sector organisations are unable to be accommodated by the future insurance or indemnity scheme, there is a very real expectation that many providers will no longer have the risk appetite to continue to





participate in the present care arrangements. Finity itself recognised that very real risk in its first report as being 'catastrophic'.

PeakCare is concerned the pursuit of a nationally consistent approach is no longer a priority and that each State and Territory is inclined to respond differently to the recommendations in the Report, as well as following different timeframes for arriving at a solution. For example, we understand that progress is well underway in one jurisdiction, while another has introduced an interim scheme that adopts the Finity recommended scheme in its entirety without having appropriately consulted the sector. This diversity of approach is highly problematic for organisations that have a national footprint and loses sight of an opportunity to harmonize a critically important response to a universal issue across the country.

## **SUMMARY**

Thank you for the opportunity to provide information in response to the draft design principles and key considerations intended to support Queensland's long-term solution to the lack of available PSA insurance for out-of-home care and youth homelessness service providers.

PeakCare looks forward to working in partnership with the department on the implementation of a long-term, nationally consistent solution to addressing this market failure and ensuring the ongoing viability and sustainability of the child and family sector in Queensland.

Yours sincerely,



**Thomas Allsop**

Chief Executive Officer

PeakCare Queensland Incorporated

(Pronouns: he/him)

