



PeakCare
Queensland Inc.

Submission to

Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation paper:
Institutional Responses to Child Sexual Abuse in
Out-of-Home Care

26 April 2016

CONTENTS

Part 1: Introduction	2
Part 2: About PeakCare and this submission	2
Part 3: Feedback in response to the consultation paper	3
1. General comments	3
2. Responses to specific areas for comment in the consultation paper	5
Part 4: Conclusion	9



Part One: INTRODUCTION

In March 2016, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) released a consultation paper entitled, *Institutional Responses to Child Sexual Abuse in Out-of-Home Care*.

Drawing on research and consultation work, case studies and private sessions, the consultation paper asserts that inconsistencies across Australian states' and territories' out-of-home care systems "...may mean that children receive responses in differing levels of protection, care and support, depending on their circumstances and geographical location".

The consultation paper seeks stakeholder views about a range of topics and offers approaches to addressing perceived deficits. Of note is the Royal Commission's insistence that these deliberations include responses to child sexual exploitation and child-to-child sexual abuse.

PeakCare welcomes the opportunity to make a submission in response to the consultation paper.

Part Two: ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare Qld Inc. (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 vulnerable 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. Member agencies 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 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, usually congregate care settings, such as residential services and supported independent living settings.

This submission focuses on some of the foundational premises apparent in the consultation paper and also responds to some of the specific areas about which comments are sought.



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Part Three: FEEDBACK IN RESPONSE TO THE CONSULTATION PAPER

1. General comments

Getting the legislation, policy, investment and practice frameworks for out-of-home care right so that the diverse groups of children and young people across metropolitan, regional, rural and remote locations enjoy equitable access and experiences that prevent unnecessary entry into out-of-home care; ensure safe and healthy stays in out-of-home care during which they remain connected to family, culture and community; and support timely and smooth transition from out-of-home care is contested. The Royal Commission's inquiries into these matters which are at the intersection with contemporary and historical child sexual abuse will hopefully bring evidence-informed reform to the ways that states and territories regulate and resource their out-of-home care and related service and support systems.

Before responding to specific proposals and areas for consideration, this submission offers some general comments.

The consultation paper states that the out-of-home care system is for children who cannot live at home safely and so are cared for "outside of their families" (page 12). This is inaccurate and incongruent with the data on the following page that shows that almost half of the children in Australia's out-of-home care system live in kinship / relative care arrangements, that is, with family members.

Although it does not fundamentally affect the intended outcomes of the Royal Commission's commentary on out-of-home care, it is asserted that there is "a greater number of children entering OOHC" (page 23). This is not true. The number of children entering out-of-home care across Australia has been stable and generally decreasing for quite some time. As also noted in the paper, children are staying longer in out-of-home care.

Conceptualisation of and therefore the regulation of kinship care

PeakCare is concerned about how 'kinship' or 'relative' care as an out-of-home care setting is conceptualised and therefore approaches to how it is regulated. It is problematic to think of kinship care in the same way as foster (i.e. stranger) care. Kinship care is fundamentally different – the motivation to care, the connection between the child/ren¹ and the carers, the complications of intra-familial relationships. Jurisdictions (directly and / or through funded services) either step back from financial, case management, practical and other support across the child's placement and transition from care, or treat kinship care largely in the same way as foster care.

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

As a type of out-of-home care and notably the preference in most jurisdictions for all children removed from parental care, kinship care should be regulated differently from foster care, not using the same approaches to assessment, criminal and personal history screening, training requirements, monitoring and so on. Just because children are placed with relatives or even in the guardianship of relatives, their needs do not cease. In addition, because of the different circumstances of family taking on the care of family, the carers and carer household require specialist and / or targeted support.

The consultation paper, while acknowledging differences (eg. page 113) nevertheless tends to support utilising the same mechanisms, albeit with some possible tinkering, to regulate foster and kinship care as if these aspects apply to family caring for family. If supporting kinship carers and the children in their care was treated more like targeted family support, working in partnership with the family would very likely mean that carers would be welcoming of advocacy, practical and educational supports, and therapeutic interventions.

The importance of evidence-informed recommendations

PeakCare takes this opportunity to advocate that the recommendations made by the Royal Commission should be evidence-informed. While the Royal Commission has found public and private hearings and submissions valuable in identifying issues, inconsistencies, and areas for reform, these contributions and the Royal Commission's observations do not comprehensively or rigorously indicate a research base about child sexual abuse today in out-of-home care or how best to regulate out-of-home care in Australia. The research program undertaken and in progress to support the Royal Commission's work is therefore invaluable as will be the commentary and recommendations in the final report in identifying gaps and areas for further research.

Aboriginal and Torres Strait Islander Child Placement Principle

The consultation paper refers to the Aboriginal and Torres Strait Islander Child Placement Principle (eg. page 18) and includes an assertion that compliance with the placement hierarchy for decisions about where and with whom to place an Aboriginal and Torres Strait Islander child may be contrary to the child's best interests. Not only does the assertion ignore that a child's culture is a strength and not a deficit, the statement is indicative of a misunderstanding about the *five* domains that underpin the intent of the Child Placement Principle and which states and territories have agreed to focus on as a priority under the Third Action Plan for the *National Framework for Protecting Australia's Children*.

Without any intention at all of undermining the significance and meaning of the Child Placement Principle for Aboriginal and Torres Strait Islander children and their families, the principle of placing a child with protective needs with extended family or significant others applies to *all* children and is reflected in legislation across the world.



To pit 'culture' against a child's 'best interests' only if the child is an Aboriginal or Torres Strait Islander child indicates that risk assessments and planning are inadequate and that racist attitudes continue to permeate decision making in respect to Aboriginal and Torres Strait Islander children and families.

Depiction of risks

Another concern is with the depiction of risks to children in out-of-home care. The paper's introductory discussion (page 16) states that children in out-of-home care are more vulnerable to child sexual abuse than other children because of their loss of connection to family, community and culture (notwithstanding children living with kin). This is contrary to findings from the recent survey of children in out-of-home care, aged 8 to 17 years, to support reporting against indicators in the *National Standards for Out of Home Care*. Children across Australia reported positively about their sense of connection to family, community and culture, as well as saying they could identify a significant adult in their life.

Access to therapeutic supports

The consultation paper sets out pressures in respect to suitable, available placements that the Royal Commission has 'heard' by different placement types (pages 16-17). It is only in respect to residential care (page 17) that "inconsistent and limited access to therapeutic support for both young people and carers" is mentioned. Putting aside what 'therapeutic support' to residential care workers means, there are inadequacies in access to and eligibility for therapeutic support for children and young people across all placement types, at least in Queensland. This point is important as inequitable access and the inadequate spread of therapeutic supports significantly contribute to not addressing the "complex needs of children with sexually harmful behaviours" (as identified on page 6) and past or current sexual abuse and exploitation of children in out-of-home care.

Also, in this section, 'young people' rather than the usual term of 'children' being used as inclusive of children aged 0 to 17 years, is used. It should be noted that children *and* young people live in residential care, which has an implications for how these settings are, for example, designed, operated, and staffed.

2. Responses to specific areas for comment in the consultation paper

Building on the above general comments about some aspects of consultation paper, PeakCare offers the following specific comments in response to particular issues or approaches raised in the consultation paper.



Child sexual exploitation and child-to-child sexual abuse

PeakCare agrees that child sexual exploitation and child-to-child sexual abuse are challenging and sensitive topics. PeakCare trusts that a submission from the Queensland Department of Communities, Child Safety and Disability Services will detail the evidence base and approaches being utilised and developed by the department's Complex Case Advice and Practice Support team, Child and Family Practice and Service Development.

Victoria's Therapeutic Treatment Orders are included in the consultation paper as an innovative approach. Self-evidently, for there to be any point in subjecting a child to a treatment order, there must be ready access to suitable services nearby to the child's family and community connections. In most areas across Australia, this will require a significant investment. When services are or become available, our hope is that an order being the gateway to treatment, rather than equitable access based on need, will be redundant.

Perceptions of issues and remedies that are raised with PeakCare by out-of-home care providers include:

- foster and kinship carers and residential care service workers should be recognised as integral to a child's care team and be provided with the information they need to properly care for the child and for other children in the placement
- rigorous matching of children's needs and behaviours to the capabilities of the placement setting requires attention to the range and mix of placement options available, targeted supports to carers, and therapeutic supports to children
- early and earlier identification by skilled carers and professionals of problem sexual behaviours, and access to therapeutic care and treatment is needed

Improving regulation and oversight to better prevent and respond to child sexual abuse in out-of-home care

Noting the differences in approaches to regulation across Australia, and asserting that the focus is on safety (page 59), five regulation and oversight mechanisms are under consideration. A repeated theme from the Royal Commission's hearings and studies has been that children did not tell anyone because they did not think they would be believed and / or they had no one to tell. This lack of support and feeling of hopelessness do not point to jumping to increased regulation and monitoring in the name of safety. They point directly to more consistent and effective case management and coordination; keeping children connected to their family, culture and community; better matching of children to placements; and early identification and equitable access to treatment and supports. This isn't to discount the criticality of children being and feeling safe, but to highlight a seeming lack of attention to children's wellbeing and stability.

The Royal Commission is strongly advocating for independent accreditation and oversight, as occurs in New South Wales. The Queensland regulatory regime, which was influenced by the findings of the *Commission of Inquiry into Abuse of Children in Queensland Institutions* (the Forde Inquiry), includes an independent external assessment of the capacity of a licence applicant to provide care that meets the legislated standards of care. The determination of the licence application by the departmental delegate takes that assessment into account, as well as a range of other data, information and reports about the organisation, its management and workforce. A core finding of the Forde Inquiry was that children had not received the standard of care to which they were entitled and that the government and non-government providers had in effect colluded in placing and keeping children in abusive and unsatisfactory institutional settings. Hence, inter alia, the independent assessment of capacity to provide care that meets legislated standards. If collusion between the government and non-government service providers is or was an ongoing concern, or review mechanisms did not exist or were ineffective, a totally independent regulation and oversight would be justified.

PeakCare is supportive of government and non-government providers of out-of-home care being held to the same standard of 'accreditation' and ongoing monitoring processes.

For a range of reasons and as outlined in our submission to the Royal Commission's early inquiries into working with children checks, PeakCare does not support the blanket imposition of these checks on kinship carers, particularly potential carers whose cultural backgrounds (notably Aboriginal and Torres Strait Islander peoples) have brought them into greater contact with police and with more serious consequences than for other population groups. It is especially ironic given the stated preference to place children with relatives and kin and then to put known obstacles in place. Similarly, at a time when jurisdictions are actively looking to better support young people's transition from State care and to support young people to stay connected, including to stay on in a placement post 18 years, PeakCare is astounded by the proposal to impose working with children checks on children at all, and in particular, young people in carer households (eg. biological children of the carer) or young people who are in or transitioning from State care.

Information sharing

The consultation paper contains four approaches to improving the currently confused and confusing area of information sharing – with children, with carers, between parties, and between jurisdictions (pages 78-79). PeakCare generally supports the proposals. In respect to prescribed entities, licensed / accredited care services that provide out-of-home care (eg. residential care) or recruit, train, assess and support approved and provisionally approved foster and kinship carers, should be included. Also relevant are the agencies external to the statutory child protection body, that fulfil the role of community participation in decision making in respect of Aboriginal and Torres Strait Islander children. In Queensland, these agencies are termed 'recognised entities'.



Applying child safe elements to the out-of-home care sector

PeakCare agrees that child safety strategies and frameworks must be considered within broader policy approaches that promote children's safety, health and wellbeing, and that children's (or anyone's) experiences of sexual abuse are not readily disentangled from their experiences of neglect, physical abuse, emotional abuse and so on (page 80). We are supportive of the elements and of the need for a holistic approach.

The physical and online environment is one that is often raised in consultations with PeakCare member agencies and other non-government organisations. More than other aspects, this one highlights tensions for service providers and carers of normalising daily life and affording children in out-of-home care comparable experiences to their peers. PeakCare is aware of the points made about risks of child sexual exploitation and child-to-child abuse being influenced by poor practice and lower than desired levels of resourcing. In respect to children's online access, the focus on surveillance and monitoring internet use takes on a life of its own and becomes quite different to what a 'normal parent' would do. Ironically actions that a parent might actually do, such as moving the computer to a common space, limiting screen time, using 'nanny-net' filters or rostering turns for use of a shared device, are incorrectly assumed particularly by residential care workers as somehow not being allowed or contravening the child's rights. Organisational leadership, raising awareness about sexual abuse and exploitation, children's participation and empowerment, review processes, and family and community involvement are factors that collectively act to keep children safe and mitigate risk.

Prevention of child sexual abuse in out-of-home care

Education prevention programs for children; staff training, support and supervision; and strategies around disclosures of sexual abuse (pages 98-99) are important but will only have impact if they are underpinned by adequate resourcing and equitable access to a comprehensive service system; a strong legislative, policy and practice framework; and practice that is characterised by collaboration, respect and cultural integrity. While children continue to move through multiple placements, have a new case manager every few months, have their connections to family, community and culture undermined, their learning and education disrupted, or their complex and challenging behaviours unattended to, children will continue to think they will not be believed or that they do not have someone to tell. In short, the strategies are good but without contextualising them in the bigger picture, their contribution will be undermined.

Improving support for children and young people

A range of proposals are under consideration in respect to better supporting children who have been sexually abused, and their carers and family. As in other Australian



jurisdictions, Queensland has been subject to numerous public inquiries focusing on the child protection system and / or certain types of abuse or out-of-home care settings, over recent years. While different, the fundamental focus of findings and recommendations has been similar across inquiries and generally consistent with the proposals that the Royal Commission raises for consideration in the consultation paper (pages 120-122). In developing and implementing responses to recommendations, each jurisdiction seeks to retain a place-based approach that fits the particular population, geographic, contextual and other factors that make each state and territory similar yet unique. National standards and approaches are nevertheless invaluable in ensuring equitable responses to children across jurisdictions.

While PeakCare is largely supportive of the proposed strategies, which would benefit all children in out-of-home care not just those children who have been sexually abused, we are of the view that more detailed discussion is required across stakeholder groups about some of the proposals. One reason for this is that jurisdictions are already working to particular priorities, notably strengthening prevention and early intervention for at risk and vulnerable children and their families, and improvements at the nexus between child protection and other service systems such as domestic and family violence. In addition, some jurisdictions are further along in projects, for example, to develop trauma-informed, therapeutic frameworks for residential care and / or all out-of-home care; integrated responses to Aboriginal and Torres Strait Islander children, families and communities driven by community-controlled agencies; resourcing professional foster care models; and improved transitions from State care and access to post care supports and services. In relation to the implementation of the proposed strategies, PeakCare has a preference for an approach that would build on, rather than distract or detract from, relevant initiatives that may already be underway within various states and territories.

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 about improving national, state and territory government and non-government efforts to prevent and respond to child sexual abuse in out-of-home care.



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