



PeakCare  
Queensland Inc.

Commissioner Peter McClellan AM  
Royal Commission into Institutional Responses  
to Child Sexual Abuse  
GPO Box 5283  
Sydney NSW 2001

11 November 2013

Dear Commissioner McClellan

**Re: Issues Paper 4: Preventing sexual abuse of children in out of home care**

PeakCare Queensland Inc (PeakCare) welcomes the opportunity to make a submission in response to the fourth issues paper released by the Royal Commission into Institutional Responses to Child Sexual Abuse.

PeakCare is a peak body for child protection services in Queensland. Our members are a mix of large, medium and small non-government organisations providing supports and services to children, young people and families across Queensland, including children and young people placed away from their families in out of home care.

When developing this submission, PeakCare is mindful of the obligation on government, out of home care service providers, and regulatory mechanisms to do no further harm to children and young people who have experienced abuse and neglect. We have also taken heed of factors associated with good regulation to apply them to the context of the nature and history of the service providers across the child protection and out of home care sectors, and the mix of settings in which out of home care is provided. These factors include utilising mechanism/s that respond effectively and proportionately to the 'problem'; that the objectives of the regulatory regime are clearly understood across stakeholder groups; and participation in the regime is not disproportionately costly, onerous or seemingly without purpose for service providers. Ultimately the regulatory regime should mean that, across Australia, children and young people who require placement away from their families in out of home care feel and are safe and that they experience the same standard of care regardless of location. Any risk to those children and young people of sexual abuse from those entrusted to care for them or other children in the out of home care setting should be proactively reduced or eliminated, and any suspected or known instances should be responded to swiftly and appropriately.

*Oversight should be independent from the statutory child protection agency, and supportive of continuous improvement*

PeakCare is of the view that government's regulatory role should be independent from its statutory child protection roles of case management and decision making about where and with whom to place a child who requires out of home care. Government providers of any form of out of home

care, as in New South Wales or Western Australia, should be regulated in the same way as non-government or private providers.

PeakCare also supports a continuous improvement approach to providing quality care, as opposed to punitive measures. Similarly, regulatory regimes can be skewed to assessing compliance with prescribed processes or outputs to the detriment of the service provider using, for example, a different or culturally competent process, which achieves the same result.

PeakCare is keen for clarity about the balance between the objectives of reducing administrative burden on parties (i.e. ‘cutting red tape’) and government utilising the most appropriate regulatory mechanism. In this instance, notwithstanding the need to define and establish the scope of the problem, regulatory regimes that seek to prevent sexual abuse of children placed in out of home care should be evidence based and ensure children receive the quality of care to which they are entitled. As the Royal Commission is aware, a recommendation from the Queensland Child Protection Commission of Inquiry (Carmody Inquiry) proposes consideration that the licensing of care services (administratively defined as any out of home care setting) be ceased. The Inquiry asserts that administrative measures associated with contract management and independent monitoring of compliance with the *Human Services Quality Framework* will suffice as well as embrace red tape reduction.

#### *Match between the out of home care setting and the risks posed to children and young people*

It is also important that regulatory frameworks respond to the risks in different out of home care settings. Across jurisdictions, most children and young people are placed with foster and kinship carers, compared with other care settings. The strategies for protecting children, reducing the risk of (sexual) abuse and neglect, and ensuring appropriate reporting and response mechanisms are different to those which apply to congregate care settings where there is a turnover of workers in an organisational, non-family based environment. In terms of preventing child sexual abuse in institutional settings<sup>1</sup>, a multi-pronged approach, incorporating the following, is warranted:

- ‘increasing effort’ - assessing and managing the risk that an individual might pose within the context of the institutional setting
- ‘increasing risks’ – examples include utilising building design, codes of conduct for interacting with children, surveillance, independent inspections, and encouraging co-workers to report suspicious behaviours so as to increase the risks to a perpetrator of being exposed, and
- ‘removing excuses, removing permissibility’ – challenging organisational culture that permits or passively condones abusive, dehumanising or otherwise unacceptable behaviours.

#### *Core features of regulatory frameworks*

As the Royal Commission is aware, the Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Inquiry) found that the statutory agency had, in effect, colluded with non government out of home care providers such that children and young people did not receive the standard of care to which they were entitled. Inadequate monitoring and oversight and the turning of a ‘blind eye’ to the abuse and neglect of children in an under-resourced system were identified as contributing factors. In response to a recommendation (number 20), a regulation was made to state that the chief executive’s determination of an application for a care service licence must be

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<sup>1</sup> Smallbone, S., Marshall, W.L. & Wortley, R. (2008) *Preventing child sexual abuse: Evidence, policy and practice*, Devon, Willan.



informed by an independent, external assessment of the capacity of the applicant service to provide care that meets the legislated standards. PeakCare is of the view that, irrespective of whether the Queensland Government's regulatory framework for out of home care includes licences, the agency authorised with determining where and with whom a child is placed (eg. statutory child protection agency) should not be the same agency that assesses compliance or accredits against the agreed standards.

As noted in the Royal Commission's fact sheet about preventing sexual abuse of children in out of home care, out of home care in Queensland is predominantly provided directly (eg. residential care services) or indirectly (eg. assessing, supporting, training and day to day monitoring of foster and kinship carers who hold certificates of approval granted by the statutory agency) by funded or contracted, licensed non-government organisations and private providers. Some carers, mostly kinship carers it is understood, are assessed, supported, trained and monitored by the statutory agency, a situation which the Carmody Inquiry has recommended be ceased. Also, as noted in the Royal Commission's fact sheet, the Queensland Government has not been subject to the same standards or regulation as non-government out of home care providers despite undertaking the same functions in respect of carers. While the Queensland government currently does not operate any out of home care 'facilities', it should be noted that the preferred approach of contestability will inform future provision of child protection services and influence responses to the Carmody Inquiry recommendations, notably those about boarding schools and secure care facilities being utilised as 'out of home care' options. As indicated above, PeakCare is of the view that regardless of provider status, the same service or practice standards and monitoring regime should apply.

#### *Models for checking out of home care practices*

Another factor raised in the issues paper concerns different models that are or can be used to check 'OOHC practices'. Three approaches are referred to - audit, regular supervisory visit, or irregular visit by an 'official' visitor. An audit approach is of value when the regime is meaningful to those subject to audit, does not permit mechanistic compliance, is evidence-informed about factors that deliver quality services and outcomes, and unambiguous, transparent measures against which performance can be measured and compared. Organisations providing out of home care services in Queensland have found self assessment against the standards to be useful, in preparation for independent, external assessment. In terms of regular or irregular visits by professionals, in most jurisdictions, children are subject to a range of known people (eg. statutory and non-statutory caseworkers, carers, other professionals) coming into and out of their homes and lives. The reported turnover of personnel in some of these positions and the time needed to develop a (professionally-based) trusting and meaningful relationship is often raised as a mitigating factor, particularly in respect of statutory workers. A more fundamental issue however relates to the core purpose/s of 'visits' by a child's designated caseworker or 'official' visitor, for example, whether visits are to inspect facilities, observe the quality of care provided to the child, individual advocacy etc. Not all jurisdictions have regular or 'community visitor' programs and most certainly the cost of Queensland's scheme was subject to consideration by the Carmody Inquiry, with recommendations made to re-focus the role and, in effect, scale it back. Notwithstanding that children and young people (or their carers) may derive satisfaction from visits by official visitors, competence to check 'OOHC practices' and not wanting to duplicate the role which a child's designed caseworker, usually from the statutory agency, has makes the official visitor the least effective and most costly option in terms of proactively reducing or eliminating child sexual abuse in out of home care, and responding swiftly and appropriately to any suspected or known instances of same.



*Measuring the rate of sexual abuse of children in out of home care*

The agreed measures for reporting against the National Out of Home Care Standards - sexual abuse substantiations and child sexual assaults - are proxy measures for understanding the extent to which children and young people are subject to child sexual abuse, including when placed by the statutory agency in out of home care. Proxy measures are important and useful but not perfect for understanding what has happened and, where possible, trends over time. As stated in the *Report on Government Services*<sup>2</sup>, each jurisdiction's substantiation rate may be affected by changes in policy, practice and funding such that definitions of 'substantiation' vary and the data are not comparable and cannot be used to indicate change over time within a jurisdiction or across Australia.

If you have any queries about this submission, please do not hesitate to contact me on 07 33681050.

Yours sincerely



Lindsay Wegener  
Executive Director

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<sup>2</sup> Steering Committee for the Review of Government Service Provision (2013) *Report on Government Services 2013*, Melbourne, Productivity Commission, p.15.27.

