



Submission to the

Community Support and Services Committee

**Child Protection Reform and Other  
Legislation Amendment Bill 2021**

1 October 2021

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## INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the *Queensland Parliament's Community Support and Services Committee's* invitation calling for submissions in response to the *Child Protection Reform and Other Legislation Amendment Bill 2021*.

## 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 approximately 50 member organisations which include small, medium and large, local and state-wide 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 and 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

PeakCare congratulates the Queensland Government on the Bill and acknowledges the proposed amendments as positive steps in strengthening our child protection system. In particular, PeakCare wishes to express its support for the proposed amendments to improve adherence to the Aboriginal and Torres Strait Islander Child Placement Principle (CPP), and better protect the human rights and entitlements of children and young people who interact with the child protection system.

While recognising the history and ongoing legacy of children protection legislation and associated support systems in perpetuating experiences of oppression, disadvantage, and discrimination, particularly for Aboriginal and Torres Strait Islander peoples, these reforms are a positive step in improving access to, and participation in, services and interventions available for children, young people, and their families.

PeakCare has been consulted in the development of this Bill and has had the opportunity to develop an understanding of the perspectives of some of our member organisations. This submission has been informed by these perspectives. PeakCare further acknowledges the expertise of the Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) and asks that the Committee gives particular attention to the views of this specialist peak body.

While PeakCare is broadly supportive of the proposed amendments, we have identified several opportunities to strengthen the Bill which are outlined below for the Committee's consideration.

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## PEAKCARE'S RESPONSE TO THE PROPOSED AMENDMENTS

### **Broadening the purpose of the *Child Protection Act 1999* (Qld)**

In relation to broadening the purpose of the *Child Protection Act 1999* (Qld) “to provide for the protection of children, promoting the safety of children, and to the extent that it is appropriate and practicable, supporting families caring for children”, PeakCare does not support the use of the term ‘practicable’ or ‘to the extent that it is appropriate’ and recommends they be removed. PeakCare considers support for families is an integral part of the child protection system, especially in supporting the goal of reunification. Even when parents may not resume their role as a child’s primary carers, families (and their child) should nevertheless continue to be supported in becoming reconciled with what their future relationship will be. Active efforts should be made to support both children and families and demonstration of the active efforts that have been made is a critical aspect of this.

### **Best interests considerations**

In relation to clarifying that the general principles apply for considering a child’s safety, wellbeing, and best interests, PeakCare recommends a need to define what the term ‘best interests’ means. This could be as part of the Act or through a formal statement that can be objectively measured. The current lack of definition provides too much subjectivity and discretion in determining what ‘best interests’ could mean in a policy and practice setting.

Supporting this position, PeakCare understands the term ‘best interests’ has been known to be applied in situations of declining outcomes for a child or young person and used as a descriptor to positively justify one decision that is only marginally better than another because there are no evident alternatives. An example of this is the removal of one child (the aggressor) in a placement to an alternative option that offers poorer ongoing outcomes.

PeakCare suggests a definition of ‘best interests’ of a child could be linked to measures of emotional health, physical health, and cultural safety, and if all decisions were targeted at improving these measures, better outcomes could be realised. We further recommend any definition also consider the short- and long-term impacts of decision-making on what forms best interests. The immediate ‘best interests’ of removing children from a poor situation may have much longer-term impacts through the breaking of attachment and in some circumstances, poorer alternative placement options.

PeakCare further recommends decision-makers be required to provide an explanation of how they have applied consideration of ‘best interests’ of the child to their decision-making and actions.

### **Expanding the list of rights enshrined in the Charter**

While PeakCare is supportive of the inclusion of additional rights in the Charter, we consider the Charter of Rights should apply to all children who come into contact with the child protection system, rather than being limited to only those who are in-care. This approach is consistent with section 15 of the *Human Rights Act 2019* (Qld). In addition, given the number of rights and their breadth, we consider there would be value in distinguishing between rights which are held by all children, regardless of their guardianship or

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custody arrangements; those that are of specific relevance during children's contact with the child protection system; and those that are of specific relevance when children are in-care.

In relation to expanding the requirement for the chief executive to inform children about the Charter of rights to include a requirement to explain where children can seek help, PeakCare considers use of the term 'regular' is subjective and requires clearer definition to ensure consistent and appropriate interpretation and application in practice.

In relation to the definition of 'parent', PeakCare shares the view of other key stakeholders that it does not appropriately reflect the diversity of Queensland's families and is inconsistent with section 15 of the *Human Rights Act 2019* (Qld). PeakCare recommends this definition be revised and amended noting parents may be non-biological, include stepparents, grandparents and other extended family members. PeakCare also recommends any revised definition should avoid an assumption of heterosexual parentage and appropriately reflect the potential for mother(s) and father(s) to be considered parents.

### **Aboriginal and Torres Strait Islander Child Placement Principle**

While PeakCare is supportive of requiring "active efforts" in relation to the Aboriginal and Torres Strait Islander Child Placement Principle, we recommend consideration is given to expanding this to include a requirement preventing the Court from making a decision unless it is satisfied that the Chief Executive or delegated decision-maker has made, and can evidence, active efforts to comply with the Child Placement Principle.

### **Expanding the existing reviewable decisions framework**

In relation to extending the framework of reviewable decisions to include the right for children who do not have a long-term guardian to request a review of their case plan, PeakCare is of the view that any child should be able to request a review of their case plan and it is important that this is not restricted to just those children who have long term or permanent guardians.

### **Participation principles and systemic participation**

In relation to the proposed provision to provide that the chief executive's functions include ensuring children have meaningful and ongoing opportunities to participate in decisions about development of programs and services relating to the purpose of the *Child Protection Act 1999* (Qld), PeakCare recommends this proposed provision also apply to NGOs who are undertaking the development of programs and services which relate to the purpose of the *Child Protection Act 1999* (Qld). As part of this, consideration could be given to the incorporation of appropriate caveats that reflect that this is to occur within the varying scope and/or limitations of the role and responsibilities held by NGOs in relation to program and service development.

In relation to including participation principles relating to how a child may choose to participate and be supported in their participation; and that children or young people may choose not to participate, and this choice not cause any detriment to the child, PeakCare supports this proposed provision but considers inclusion of the term 'to the extent that it is appropriate' undermines the provision's intent. We also

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consider there is an opportunity within this provision to include a requirement for active efforts to be applied and evidenced for all children who come into contact with the child protection system.

In relation to specifying that certain information must be provided to carers to allow them to make informed decisions about a placement and to enable them to provide appropriate care, PeakCare recommends consideration also be given to the rights and entitlements of children and young people to receive information and participate in making informed decisions about placement arrangements they are involved in.

### **Expanded criminal history information**

While PeakCare supports the intent of the proposed provision permitting the chief executive to request expanded criminal history information about a person from an interstate police commissioner for the purpose of assessing the suitability of the person to be a provisionally approved carer (and adult members of the person's household), we consider it will not address the broader systemic issue relating to the current criminal history screening approach. This includes the impact current screening requirements are having on the long-term stability and care for children and young people involved in the child protection system. An example of this is disruption of long-term care arrangements when children who turn 18 years of age are made subjects of checks as household-members with the result being that they are no longer permitted to reside within the household, despite no changes having occurred to the actual risk factors.

### **Definition of "kin"**

PeakCare recommends this provision includes a sub definition that applies to Aboriginal kin based on the QATSICPP Position Statement on Aboriginal Kinship Care.

## **Concluding remarks**

PeakCare welcomes the passage of the Bill as a positive step in strengthening our child protection system in line with the *Supporting Families Changing Futures* reform program.

As Queensland approaches the final stretch of the 10-year *Supporting Families Changing Futures* journey, now more than ever, it is critical for the Queensland Government to develop a well-articulated and cohesive social policy framework that places children's rights and entitlements to safety, wellbeing and equitable access to life opportunities and the support of their families at the centre of all government-led decisions and activities. This is a framework which should not be driven by piecemeal child protection policies, but rather, child protection policies need to be located within and remain responsive to this overarching framework. It is a framework that should be used to powerfully influence financial investment and decision-making across all areas of Government activity and used to hold all government agencies and the non-government sector to account. Without an overarching framework of this type, Queensland children and families are at risk of becoming victims of future reactive and fractured policy decisions that place greater importance on expediency and politics than on an evidence-based and values-driven vision for Queensland's greatest resource - our children.

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Thank you for the opportunity to provide a submission on aspects of the Child Protection Reform and Other Legislation Amendment Bill 2021.

Yours sincerely,



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