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PeakCare Queensland Inc.

Submission to the

Health, Communities, Disability Services and Family Violence Prevention Committee

Child Protection (Mandatory Reporting – Mason's Law) Amendment Bill 2016

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Part One:
INTRODUCTION

In March 2016, Ms Tracy Davis MP, the Member for Aspley and the Shadow Minister for Communities, Child Safety and Disability Services, introduced the *Child Protection (Mandatory Reporting – Mason's Law) Amendment Bill 2016* into the Queensland Parliament. The primary purpose of the Bill is to ensure that mandatory reporting obligations apply to certain individuals in the Early Childhood Education and Care (ECEC) sector consistent with the Queensland Law Reform Commission's report entitled *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care*. The Bill was referred to the Health, Communities, Disability Services and Family Violence Prevention Committee for detailed consideration.

In introducing the Bill, Ms Davis stated that "Mandatory reporting laws are an important component of the Queensland child protection system that assist in the detection of serious cases of abuse of children that might otherwise go unnoticed or remain hidden".

The obligation to report will apply to approved providers, nominated supervisors, co-ordinators, and employees of an approved ECEC services. If mandatory reporting is extended to the ECEC sector, the obligation on these workers will be to report 'reasonable suspicions' that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse, and may not have a parent able and willing to protect the child from the harm.

The obligation will not apply to volunteers or staff members who do not meet minimum professional qualification requirements. The Amendment Bill does not prevent any worker in the sector from (continuing to) voluntarily report suspected child abuse and neglect to engage with the parents about their concerns; contact a Family and Child Connect Service for information, advice or referral; or to make a report to the Department of Communities, Child Safety and Disability Services.

PeakCare welcomes the opportunity to make a submission in response to the Committee's invitation for submissions on the Bill.

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, which are a mix of small, medium and large, local and statewide, mainstream and Aboriginal and Torres Strait Islander non-government organisations that provide family support, child protection and out-of-home care services (e.g. foster and kinship care, residential care) to children and young people who are at risk of entry to or in the statutory child protection system and their families. In addition, PeakCare's membership includes a network of 22 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. Some staff within member agencies, notably employees of licensed out of home care services, are already mandatory reporters of suspicions about significant harm to a child in care caused by physical or sexual abuse under the *Child Protection Act 1999*. Most if not all PeakCare members hold obligations to develop and adhere to reporting guidelines and directions for handling disclosures or suspicions of harm to children and young people stemming from working in areas of child-related employment, and therefore being subject to requirements under the *Working with Children (Risk Management and Screening) Regulation 2011*.

PeakCare's interest in this issue is therefore multi-layered. While ethically and morally the response to the question of extending mandatory reporting to another professional group - early childhood educators and carers - seems straightforward, in general the implementation of mandatory reporting has a range of impacts that have not been anticipated and that create consequent problems.

Part Three:
FEEDBACK IN RESPONSE TO THE *CHILD PROTECTION (MANDATORY REPORTING – MASON'S LAW) AMENDMENT BILL 2016*

In September 2015, PeakCare provided a written submission to the Queensland Law Reform Commission's (QLRC) review of whether ECEC workers should become mandatory reporters. This submission to the Parliamentary Committee restates PeakCare's concerns that these amendments are not evidence based decisions, are not well timed given the review of the *Child Protection Act 1999* and progressive implementation of responses to the recommendations from the Queensland Commission of Inquiry into Child Protection (the Carmody Inquiry), and may cause further financial strain on social services in Queensland.

PeakCare notes that 2013-2014 data reported by the Australian Institute for Health and Welfare (2015) about investigations by the source of the notification shows that, across Australia, 1.1% of investigations followed from reports by 'child care personnel'. In Queensland, child care personnel were identified as the notifier in around 1.1% of investigations. In New South Wales and Victoria, the two largest jurisdictions and ones in ECEC sector workers are mandated reporters, child care personnel were identified as the notifier in 1.5% and 0.9% respectively. These data point to reporting by Queensland's ECEC sector as comparable to other jurisdictions without the imposition of legislatively mandated provisions.

This submission now turns to comments about how children who participate in ECEC services are currently protected and potential impacts of mandated reporting.

1. Regulation of the ECEC sector in Queensland

Governance of the ECEC sector in Queensland stems from The National Quality Framework which is comprised of the *Education and Care Services National Law* ('National Law') and the *Education and Care Services National Regulations* ('National Regulations'). In addition, Queensland has the *Education and Care Services Act 2013* and the *Working with Children (Risk Management and Screening) Act 2000*. The combined national and state regulatory frameworks provides that all educators and staff in ECEC services who work with children are aware of child protection law and understand their obligations under the organisation's child and youth risk management strategy. The regulatory framework places an obligation on employers to ensure training is provided so that all staff are aware of their legislated and other obligations. This framework provides a comprehensive foundation for the protection of children in ECEC.

2. Evidence based decision making

The explanatory notes for the *Child Protection (Mandatory Reporting-Mason's Law) Amendment Bill 2016* state that the safety, wellbeing and best interests of a child are paramount, and note the protection of children from harm as a fundamental principal. PeakCare is of the view that to protect children from harm or risk of harm, decisions and policy regarding children's protection and wellbeing should be driven by evidence based research, supported by consideration of the effectiveness and costs of legislative changes. Principally, PeakCare is concerned that the most relevant, available evidence drives decision making to protect children and young people. Sometimes discerning the best way forward requires stepping back and viewing the bigger picture rather than too quickly moving to a decision that intuitively appears to be the 'obvious' decision.

The available literature is relatively limited in respect to mandating reporting obligations for particular professions and the effectiveness of mandatory reporting in protecting children. An article in *The Lancet* (Gilbert, Kemp, Thoburn et al, 2002, p 169) offers a balanced discussion of the arguments for and against mandatory reporting. Identified benefits include government signalling that it takes child abuse seriously, awareness is raised about how to tackle child abuse, those with concerns are encouraged to make early reports, and child protection agencies receiving increased reports. The identified disadvantages include the over-burdening of child protection agencies with resources directed to investigation not intervention, adverse impact on self-referrals for help, and that professionals 'pass the buck' rather than sharing responsibility for responding to the challenges that families and children face.

Albrandt (2002) found that even with mandatory reporting in place, only 68% of the children who met the abuse or neglect criteria were reported. She concluded that given failure to report abuse, including failure of state caseworkers to report, mandatory reporting statutes may not necessarily be helpful in protecting children. She suggested the unintended consequences may be harmful in a range of ways that are difficult to predict when policy is implemented, such as preventing or

undermining help-seeking or limiting candid discussion about personal circumstances for fear of unintentionally crossing the reporting threshold.

Additionally, while acknowledging that penalty units no longer apply in respect to failing to comply with mandatory reporting obligations under the *Child Protection Act 1999*, if failure to comply brings with it penalties on individual ECEC professionals for non-reporting, workers may feel there is greater potential for being singled out and blamed for adverse outcomes. Difficulties experienced in recruitment and selection for a traditionally low paid, high turnover workforce might be exacerbated.

It is clear that further attention needs to be given to examining and understanding both the benefits and the potential unintended consequences of further extending mandatory reporting obligations in Queensland.

3. Financial cost of implementation

The financial cost of implementing mandatory reporting provisions across the ECEC sector should be properly determined before amending the child protection legislation. Concerns have been raised about the substantial financial costs of implementing and maintaining 'mandatory reporting' and characterised as an ineffective and insufficient use of resources. Mandatory reporting can lead to over-reporting of cases that do not meet the statutory threshold for intervention, which in turn puts a strain on resources and detracts from the ability of government agencies, particularly the statutory child protection agency, to respond to children and families who require a statutory child protection response.

A large number of respondents to the QLRC inquiry expressed concern for the financial impact of expanding mandatory reporting laws in Queensland. For example, the Benevolent Society stated in their submission (QLRC, 2015, p.121) that:

> *The cost of compliance with mandatory reporting requirements in terms of staff training costs and additional reporting may be onerous on small scale providers… In a sector which is already chronically under-funded… will have a detrimental impact on the sector.*

The submissions addressed the costs of training, legal insurance costs, human resources, passing costs onto customers, writing reports, and staff recruitment. While the QLRC noted these consequences, it did not provide any recourse nor address the potential impact of taking much needed resources from other services to accommodate mandatory reporting.

4. Financial and other costs to children and their families

Introducing mandatory reporting laws to the ECEC sector has the potential to unnecessarily burden the statutory agency with reports that do not meet the threshold for statutory intervention, as well as unintentionally causing (further) harm to children and families by effectively delaying connecting parents and their children to the right services from the right provider when they need them. If large numbers of notifications are unable to be investigated or substantiated due to resourcing, this then has a significant social cost, as the child protection system is easily overburdened with notifications, a large number of which are unsubstantiated and come at a cost to government and families.

Additionally, there can be unnecessary intrusion into families, rather than directing resources to protecting vulnerable children and supporting parents to better care for their children. This can weaken the child protection system and confidence between families and service providers.

Research suggests that mandating ECEC workers to report reasonable suspicions of harm to a child caused by physical or sexual abuse would not lead to better protection and may unintentionally create additional barriers to families seeking access to important supportive networks (Ainsworth, 2002a; Ainsworth 2002b; Oswald, 2013). Building informal support networks and enhancing the capacity of families to access and connect with diversified supportive networks is a recognised goal for family support intervention. The extent to which mandatory reporting might compromise existing support networks accessed through early childhood and care services needs to be carefully considered.

In its submission to the QLRC inquiry, the Queensland Council of Social Service argued that, unless policy and funding initiatives are established to support the proper implementation of the new laws, there is a risk of negative outcomes for disadvantaged families such as Aboriginal and Torres Strait Islander children and their families, culturally and linguistically diverse communities, and families with parents who have a disability, and families who experience domestic and family violence.

Should mandatory reporting be imposed on the ECEC sector, there is a distinct possibility of families withdrawing from the service, as there is no requirement that children attend. This will severely disadvantage vulnerable children, as participation in quality early childhood programs has been found to provide positive learning outcomes to children that can aid in breaking the cycle of poverty through parental workforce participation and disadvantage children through limited access to social and learning opportunities.

Currently in Queensland, almost 100% of non-Indigenous children are enrolled into an ECEC program, compared to 65% of Indigenous children (DET, 2015). With the introduction of mandatory reporting, this disparity could likely rise given the pre-established distrust between groups that are currently under-represented in early education and over-represented in child protection services.

5. *Timing of the Amendment Bill in respect to the review of the Child Protection Act 1999*

PeakCare recognises there are legitimate issues to be raised on each side of the mandatory reporting argument. It is important to note however that amendments to the mandatory reporting obligations of designated professionals were only recently reviewed, amended and consolidated under the *Child Protection Act 1999*. That Act is currently subject to a significant review, which makes the timing of these deliberations to expand mandatory reporting obligations ill-advised.

The substantial changes to Queensland's child protection system will not be fully implemented for almost a decade. Many of the changes seek to address the issues that have been identified as reasons for non-compliance by currently mandated professional groups, for example, improved collaboration across sectors and professions, access to consultation opportunities about the decision to report or not, and increased access to family support and domestic and family violence services.

The Queensland Government's investment in the Family and Child Connect program is one of the new initiatives currently being implemented and evaluated as part of the response to recommendations from the Carmody Inquiry. The services seek to provide better access for professionals, including from the ECEC sector, to child protection 'consultants', as well as to enhance the opportunity for family members to obtain information and advice about meeting their children's needs, parenting, and available support services. As enabling services, Family and Child Connect services specifically provide the opportunity to discuss concerns and link children and families to services before problems escalate. Evaluation of this referral pathway and whether it achieves improved outcomes for children and their families would certainly inform any expansion of mandatory reporting in Queensland.

Given the planned changes to Queensland's child and family sector, particularly following the Carmody Inquiry, adding ECEC sector to mandatory reporting laws may be counter-productive. This Inquiry has driven efforts to evaluate the current mandatory reporting laws and the inclusion of additional mandatory reporter groups may potentially cause difficulty for evaluators to achieve draw accurate results from data collected. Clear guidelines for ECEC workers currently exist in Queensland, and it may be ill-timed to make significant changes given the current legislative climate.

Part Four:
CONCLUSION

To protect children from harm, the real issue is not the need to extend mandatory reporting to the ECEC sector, but to provide initial and ongoing support, resourcing, training and education to sector workers, and to foster collaborative relationships between the ECEC sector, Child Safety, and family support services and other helping agencies. What is needed may be more awareness-raising, staff training, support and supervision to enable full appreciation of the need to raise concerns with

parents and carers and how to do this effectively, rather than mandatory reporting to the statutory child protection agency.

Relying on the majority rules notion and blindly following other states in Australia does not automatically secure better outcomes for children who may be suffering from abuse or whose parents or carers are struggling to meet their physical, emotional, safety and wellbeing needs.

PeakCare appreciates the opportunity to make this submission.

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