PeakCare Queensland Inc.

Submission to the

Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee

Child Protection Reform Amendment Bill 2017

30 August 2017

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Part One:
INTRODUCTION

The Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence, the Hon Shannon Fentiman MP, introduced the *Child Protection Reform Amendment Bill 2017* (the Bill) into the Queensland Parliament on 9 August 2017. The explanatory notes refer to four objectives of the Bill:

1. Promoting long term outcomes for children and young people in the child protection system through timely decision making and decisive action towards reunification with family or alternative long term care
2. Promoting the safe care and connection of Aboriginal and Torres Strait Islander children and young people with their families, communities and cultures
3. Providing a contemporary information sharing regime for the child protection and family support system, and
4. Supporting the implementation of other key reforms under the Supporting Families Changing Futures program and address identified legislative issues.

The Department of Communities, Child Safety and Disability Services undertook two stages of public consultation to review the *Child Protection Act 1999* (the Act). These occurred between 2015 and 2017. The Explanatory Notes (page 2) refer to the review indicating that the Act generally operates effectively "…however priority amendments and opportunities for broad legislative reform were identified".

Although the Queensland Child Protection Commission of Inquiry (the Inquiry) recommended a review of the Act, the Bill focuses on priority reforms arising from the consultations and other forums. We are aware that some amendments will implement responses to particular Inquiry recommendations. Others, for example, provide the legislative provision to enable strategies in the Queensland Government's *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families*.

The Bill was referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for detailed consideration.

PeakCare Qld Inc. (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. These organisations are a mix of small, medium and large, local and statewide, mainstream and Aboriginal and Torres Strait Islander non-government organisations that provide prevention and early intervention, and generic, targeted and intensive family support to children, young people, adults and families. Members also provide 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 who are in the statutory child protection system, and their families. PeakCare's membership also includes a network of 22 individual members and other entities supportive of PeakCare's policy platform around the safety, wellbeing and connection of children and young people, and the support of their families.

PeakCare actively participated in the two public consultation processes to review the Act. In early 2016, in response to the discussion paper, *Supporting families and protecting children in Queensland: a new legislative framework*, we participated in one of the public meetings and made a written preliminary submission in March to the Department of Communities, Child Safety and Disability Services (the Department). The submission included recommendations to strengthen or develop new provisions, for example, around receiving and sharing information by specified programs; supporting young people to transition and after they have transitioned from state care; contemplating a child's 'protection' in its broadest sense to encapsulate wellbeing, safety and best interests; the concept of 'corporate parenthood' shared across Queensland Government agencies for children in state care; incorporating the concept of shared care arrangements; conceptualising kinship care distinctly differently to foster care; and prioritising out of home care placement of Aboriginal and Torres Strait Islander children and young people with Aboriginal and Torres Strait Islander carers attached to Aboriginal and Torres Strait Islander community-controlled organisations.

Subsequent to making that preliminary submission, PeakCare held six roundtable meetings with a mix of practitioners, supervisors and management of PeakCare Members and Supporters in Townsville, Rockhampton, Toowoomba, Caboolture, Eight Mile Plains and Paddington. The content of the submission and recommendations were re-visited and documented in PeakCare's report on the outcomes of the *Roundtables Roadtrip 2016*, which was circulated to Members and Supporters for final feedback before being released as PeakCare's report on the outcomes of the *Roundtables Roadtrip 2016 UPDATED*.

At the beginning of 2017, PeakCare made a written submission in response to *The next chapter in child protection legislation for Queensland: Options paper*. The paper considered 13 topics and proposed options. For each topic, PeakCare offered views about preferred legislative and policy objectives, and as appropriate, the fit with PeakCare's preference for an enabling rather than a prescriptive legislative framework, subordinate legislation, and practice guidance and resources. The content of the submission was informed by two tele-conferences with Members and Supporters at

which officers from the Department's Policy and Legislation Review Team led discussion. PeakCare also looked to the findings from Australian and international research.

This submission builds on the content of previous submissions and was informed by a statewide tele-conference with Members and Supporters on 24 August 2017. In preparing the submission, we have taken care to distinguish the provisions in the Bill and their legislative intent from the administrative, practice and resourcing issues that will require collective consideration to support implementation and an evaluation of the impacts for children, young people and families.

To be clear, while PeakCare has long asserted that many of the problems associated with Queensland's child protection legislation stem from poor practice, rather than the actual provisions, this Bill does not address some concerns that PeakCare and other stakeholders have consistently raised as warranting reform. These include:

- regulating kinship care as 'family support' rather than foster care
- strengthening legislated principles to guide the coordination and delivery of services by government and promote shared responsibility for 'corporate parenting' across Queensland Government agencies
- clarifying a child's right to express their views, the support they need to express their views, their right to participate in decision making and to have their views taken into account
- strengthening provisions for earlier and more flexible participation by family members, at every point requiring a significant decision to be made about a child's life

The submission now turns to commenting on the Bill.

Part Three:
FEEDBACK IN RESPONSE TO THE *CHILD PROTECTION REFORM AMENDMENT BILL 2017*

The Bill proposes priority amendments in respect of four main areas: permanency and stability for children and young people; safe care and connection for Aboriginal and Torres Strait Islander children and young people; information sharing; and minor and technical amendments.

The Bill is largely consistent with positions that PeakCare and other non-government stakeholders have supported in many submissions to a range of public inquiries and more specifically in consultations about the review of Queensland's child protection legislation.

The amendments locate action, inaction, decision making and interventions under the Act in a child's best interests and their right to safety, wellbeing and cultural connection in childhood and for the rest of the child's life. While the proposed amendments to the paramount principle could be viewed as implicit in decision-making about a child, we support naming these aspects in the legislative framework to recognise that many decision makers are involved in the life of a child in care and

there has not always been the attention to each child's future and adulthood that there is for children who are raised by their parents.

In particular, the following changes, in no particular order, are some that PeakCare and others have strongly and consistently argued for over a long period:

- getting timely and relevant help sooner to the pregnant mother of an unborn child who may be at risk of harm following their birth
- self-determination for Aboriginal and Torres Strait Islander children, families and communities
- embedding of all 5 elements – prevention, partnership, participation, placement and connection - of the Aboriginal and Torres Strait Islander Child Placement Principle across the Act
- broadening the information sharing provisions such that, by whatever name, 'specialist service providers' and others can give and share personal information about a child without prior consent if the underlying purpose is in the child's best interests and their safety and wellbeing
- after-care assistance and support for young people who have been subject to statutory child protection intervention to 25 years
- compassionate and helpful access to child protection and other care and personal history records

There are however three proposals about which PeakCare has previously raised concern and these concerns remain. These are discussed below: the introduction of a Permanent Care Order, limiting consecutive short term orders to a total of two years, and limiting access to transition to independence assistance to young people who have been in the custody or under the guardianship of the chief executive.

The submission now turns to detailing support for various clauses in the Bill. These are discussed in relation to the four priority amendments areas:

1. options for achieving permanency and stability for children and young people living in out of home care
2. safe care and connection of Aboriginal and Torres Strait Islander children and young people
3. a contemporary information sharing regime
4. technical and minor amendments

1. Options for achieving permanency and stability for children and young people living in out of home care

A range of amendments is proposed to achieve permanency and stability for children and young people living in out of home care. In an earlier submission about amendments to the Act, PeakCare argued that all children[1] are entitled to long term, stable living arrangements when reunification with their parents is not in the child's best interests. Achieving permanency and stability for children in out of home care is however a complex web of inter-related decisions and interventions. Removal from parental care is in itself traumatic for a child so early intervention – the right service at the right time from the right provider - and timely decision making are critical to keeping children in the family home and to successful reunification. Responses should be underpinned by the imperatives to intervene early and persistently in the trajectory of challenges being experienced by the family; establish a working alliance involving government and non-government agencies, out of home carers, the child, parents and other family members; and identify extended family members who, with support, can be carers or part of the care team around the child and family. Concurrent planning should be undertaken for all children who enter out of home care. Shared care arrangements should be incorporated (and resourced) such that out of home carers and the child's family share the child's daily care in recognition that some parents, for example with cognitive disability or intermittent mental ill-health, and their children would benefit from extra or timely ongoing support and / or respite opportunities to mitigate more intrusive interventions. For Aboriginal and Torres Strait Islander children and young people, permanency planning, as asserted by SNAICC and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, must address all aspects of permanency, as well as all elements of the Aboriginal and Torres Strait Islander Child Placement Principle (the Child Placement Principle).

PeakCare is supportive of the following clauses in the Bill:

- clause 4 – amending the paramount principle for administering the Act to refer to safety, wellbeing and a child's best interests through childhood and for the rest of the child's life
- clauses 6 and 82 – providing a definition of permanency that is situated in the child's experience of having relationships with people of significance in their life, stable living arrangements, and legal arrangements that provide the child with a sense of permanence and long term stability; and articulating permanency principles and a hierarchy of out of home care living arrangements where a child does not have a parent able and willing to care for them
- clauses 17 and 24 – requiring case plans to contain goals and actions for achieving permanency; requiring transition from care planning to commence at 15 years and for this to form part of the child's case plan from the next case plan review; and for reviews to include appropriate actions to help a child transition from care

[1] Please note that the terms 'child' and 'children' have been used to refer to children and young people aged 0 to 17 years, unless otherwise specified.

- clauses 22 and 23 – updating requirements on convenors of case plan meetings and the department to take reasonable steps to ascertain or make known at the meeting, the views of a 'relevant prescribed entity' or service provider
- clauses 36 and 37– simplifying court processes for varying a long term guardianship order to the chief executive to transfer guardianship to a member of the child's family or another suitable person, or to revoke a long term guardianship order and make a permanent order in its place so as not to re-visit whether the child is in need of protection, but rather to consider the appropriateness of a less intrusive order, unless the court is of the view that it is in the child's best interests not to use the simplified process
- clause 41 – making assistance available, as far as practicable, to young people who have been in the custody or guardianship of the chief executive in their transition from care to independence, to 25 years, including help in accessing case records in the chief executive's possession or control about the person and their time in care
- clause 42 – requiring long term and permanent guardians to keep the chief executive informed of where the child is living
- clause 44 – requiring permanent guardians to give written notice if they are no longer caring for the child and where the child lives, or if their care of the child will end in the near future

PeakCare does not support the following clauses and / or proposed amendments:

- clauses 17 and 41 – that eligibility for transition from care planning and after care supports is limited to young people who have been in the custody of or under the guardianship of the chief executive
- clause 31 - the introduction of a Permanent Care Order or, at the least, its introduction without significant refinement and safeguards in respect of its use
- clauses 34 and 35 - limiting consecutive short term orders so as not to exceed a total of two years

Ineligibility of transition to independence supports for young people subject to Long Term Guardianship to Other or Permanent Care Orders

The inclusion of provisions about transition from care planning and access to supports and assistance to 25 years for most care leavers are very welcome (clauses 17 and 41).

PeakCare's concern about making children and young people who are or have been subject to Long Term Guardianship to Other Order or, if they are introduced, a Permanent Care Order (PCO) ineligible assumes that the child's 'new' guardian has the capacity to assume parental responsibilities and associated costs of supporting a young person to adulthood, as other families in the community do.

We are of the view that the circumstances and needs of these young people at 15 years should be considered on a case-by-case basis in a case review to assess the support that the young person might need to transition to adulthood. This should be revisited until the young person turns 18 years and even then, the door should be left open to them to seek support until 25 years of age. Just because a young person's guardian is not their parents or the chief executive, does not mean that the guardian has the capacity or financial resources to support transition to adulthood.

The provision would be anomalous with other government initiatives, for example the What's Next OOHC Fund (a Department of Education and Training pilot to support any young person who has lived in out of home care in Queensland to access vocational training and education) and Next Step After Care service, that are open to any young person who has lived in out of home care.

Introduction of a Permanent Care Order

The Bill seeks to introduce a new order, a Permanent Care Order (PCO), and related provisions about eligibility, rights and review. A PCO is asserted as "…more secure than a long-term guardianship order" (Explanatory Notes, page 3) and will "…provide a child with a more stable and secure family arrangement and greater certainty so they can get on with their lives knowing that their permanent guardian has the authority to make certain decisions about their care" (Minister's Explanatory Speech). The level of intrusiveness of a PCO has been conceptualised as between a Long Term Guardianship (LTG) to Other and an Adoption order (see clause 27).

We note that the CREATE Foundation submission in response to *The Next chapter in child protection legislation for Queensland: Options paper* referred to what children and young people in care have said when consulted about what permanent arrangements mean to them. Front and centre are decision making on a case-by-case basis (i.e. individualised to each child's needs and circumstances), timeliness, culturally appropriateness, and involving them in the process. Mention was also made of valuing contact and connection with immediate (especially siblings) and extended family, permanency planning processes, and initial and ongoing case plans and the implementation of strategies to ensure contact occurs.

As raised in consultation processes, PeakCare is unconvinced of the need for a PCO. We are particularly unsupportive of the proposal that variation or revocation of a PCO cannot be instigated by the child or by the child's parents.

Children living with their own family in their own community is the 'best outcome' of child protection intervention. This includes living full or part time with extended family throughout their childhood. For *all* children in the child protection system, efforts should be directed to identifying extended family members and arrangements that with proper support, can take on the care of younger family members.

Although proposed as offering permanency for a child, clause 27 also refers to reports being provided on case plan reviews "…to state progress made in planning alternative long-term care for a child who is on a long-term guardianship order to the chief executive". This could leave a child

feeling unsettled or confused, or that their current living arrangement is not ideal because there's always an eye out for a 'permanent' carer, and it's not the carers with whom they are currently living.

While it is agreed that an order granting LTG to the chief executive is not the preferred outcome for a child, what are children and young people who live with foster carers or in residential care services to think when they are part of case reviews or later read their case file and see reports about the barriers in identifying a suitable 'permanent carer' for them? The stated intent of introducing a PCO is at odds with the unsettlement that thousands of children who are currently subject to, and those who will be subject to, orders granting LTG to the chief executive and are happy in their placement with long term foster carers.

As acknowledged by the proposed amendment to section 159 of the Act (clause 50) about making payments available to permanent carers for a child's care and maintenance, a child's pre-care needs must be addressed for all children entering care, irrespective of the type or duration of an order. Should PCOs go ahead, PeakCare supports clause 50 as a child and permanent carers would reasonably require financial support as well as advocacy and help with system navigation. As with adoption orders or other orders made under the Act, casework and professional support are required for a child to maintain their 'identity' and connections with family, community and culture. As with adoptions, there is a likelihood of a 'permanent' arrangement breaking down if the child is troubled or troublesome and this has implications for targeted support to the child and 'permanent' carers over the child's childhood and into adulthood.

Clause 40 includes an obligation on the chief executive to tell a child subject to a PCO and LTG to Other order about, for example, the Charter of Rights for a Child in Care (Schedule 1 of the Act), community visitors, and responsibilities on their guardians. PeakCare is conflicted about supporting these provisions. Concerns relate to balancing children's rights and children receiving a standard of care that matches their strengths, needs and dreams; and state intrusion into family life (i.e. in this case, into homes where the child has a legal guardian who is not the chief executive).

Clause 43 proposes obligations on long term and permanent guardians to provide care that, *as far as reasonably possible*, is consistent with the Charter of Rights with some aspects spelt out: help to transition to independence, preserving the child's identity and connection to culture or origin, and helping the child maintain a relationship with parents, family and other significant people in their life. Clause 43 also includes provision for the court to order that all or part of the requirements do not apply or apply with stated modifications. Noting that the Charter of Rights is based on the United Nations Convention on the Rights of the Child and has meaning for children in signatory countries across the world, it is ironic that a child's new 'permanent' guardian, one that is asserted as a step away from adoption, could actually, potentially or be perceived as, undermining of a child's rights to the preservation of their identity and connection to culture and origin. This applies, in particular, when a PCO concludes when the young person turns 18 years and there is a potential void in their relationships with their parents, family and significant others if this has diminished during the course of the order. A preferred option would be to ensure that this section be re-framed to remove any reference to a potential lessening of a child's rights (as stated in the Charter of Rights)

and re-assert the obligations of parties to uphold these rights throughout the administration of a PCO.

Should PCOs be introduced, PeakCare supports clause 31 as a safeguard in setting out additional matters the court must be satisfied of before making a PCO. Similar to the making of an adoption order, these include a commitment to preserving the child's identity, connection with their culture and relationships with their birth family.

Should PCOs be introduced, PeakCare supports clause 32 as a safeguard in its inclusion of particular provisions if an application for a PCO is proposed for an Aboriginal or Torres Strait Islander child. These relate to proper regard for the five principles, the Aboriginal tradition or Island custom relating to the child, and the views of the child, a member of the child's family and an Aboriginal or Torres Strait Islander entity . Clause 32 includes that the court cannot make the order unless it is "…satisfied the child's case plan appropriately provides for the child's connection with their culture, community or language group, to be developed or maintained, and the child has been consulted (if appropriate), on the decision to apply f or the order" (Explanatory Notes, page 35).

PeakCare does not support clause 33 that would mean that only the litigation director could apply to vary or revoke the order. We are of the view that despite assertions that such an order will engender feelings of permanency for children and carers, circumstances change and subject children and their parents should have the right to seek a variation (eg. on any conditions made via clause 33) or revocation.

Should PCOs be introduced, PeakCare is supportive of a complaints mechanism for a child's parent and for a child if it is believed the permanent guardian is not complying with their obligations, the obligation on the chief executive to respond and deal with complaints, and review rights with the Queensland Civil and Administrative Tribunal (clause 45).

Limiting consecutive short term orders to a total of two years

PeakCare understands that uncertainty for children and their parents and timely decision making in a child's life are driving amendments that would prevent courts from making or extending short term child protection orders where the combined total duration of an order or consecutive orders would be more than two years unless it is in the best interests of that child to do so. There is a range of reasons why two years may not be long enough for a family to address complex or longstanding concerns that have brought them to the attention of the statutory system and be in a situation to resume full time care of their child/ren. Some stem from structural and systems failures (eg. affordable housing, racism). Others are related to a lack of timeliness of early-enough interventions (eg. 'everyone' noticing that the family is not coping and making reports to Child Safety, not talking with the family, referring them for assistance or offering the help the family needs); the absence of or long waiting lists for specialist or targeted services (eg. drug rehabilitation services); unreasonable expectations on the parents; delays in departmental decision making; caseworkers dropping the ball on casework and letting cases drift; lack of clarity about which services are working with the child and family to address their needs; confusion about sharing information about progress and issues;

parents and / or children not being able to access legal representation; re-emergence of a parent who has been 'out of the picture'; or a death in the family.

The Bill therefore proposes that the court have the discretion to make another short term order that exceeds the 'prohibited' two year limit if it would be in the child's best interests.

PeakCare is of the view however that legislating a neon deadline will not help parents or necessarily support better practice around intervening early or ensuring access to the right services at the required level of intensity from the right provider for as long as needed. Rather it will punish those parents who have faced legitimate problems and challenges in trying to keep their children safe.

Options for dealing with the issue better are to place a legislated obligation on the chief executive and authorised officers to provide services and interventions and explain to the court why another order beyond two years was not long enough; or deal with timely decision making and case drift administratively through policy, procedural and / or practice directives to authorised officers, the Litigation Director and / or the court. This would more clearly place the onus on the chief executive and authorised officers to fulfil their responsibilities in ensuring parents' access to the right services at the right time and by the right provider.

2. Safe care and connection of Aboriginal and Torres Strait Islander children and young people

The Next chapter in child protection legislation for Queensland: Options paper referred to the high level of support from stakeholders across consultations about recognising self-determination and the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (the Child Placement Principle) in Queensland's child protection legislation. The options paper stated that such changes acknowledge that Aboriginal and Torres Strait Islander children should be cared for within their own families and communities, and that families and communities are best placed to care for their own children.

PeakCare, a partner in SNAICC's *Family Matters – Strong communities, Strong culture, Stronger children* campaign, strongly supports the reforms contained in the Bill and believes the amendments are critical because they will make explicit the rights, entitlements and responsibilities of Aboriginal and Torres Strait Islander children, parents, extended family, and communities to self-determination, notably to support every Indigenous child's right to be raised in their own family and community (the 'prevention' principle of the Child Placement Principle).

For a range of historical and contemporary reasons, the administration and discharge of responsibilities around an Aboriginal or Torres Strait Islander child's best interests has been undermined by negative perceptions of the contribution of culture and connection to family, culture, community and country. Specific provisions are required in the Queensland's child protection framework in relation to Aboriginal and Torres Strait Islander children, families and communities.

It is to be commended therefore that the Bill's Explanatory Notes assert, inter alia, that the safe care and connection of Aboriginal and Torres Strait Islander children will be achieved by a range of means and most importantly by the addition of new principles that recognise the right of Aboriginal and Torres Strait Islander people to self-determination, and the explicit incorporation of five 'additional' principles - prevention, participation, partnership, placement and connection - that will permeate decision making and approaches to supporting and working with Aboriginal and Torres Strait Islander children, families and communities. The principles recognise and support individual child and family self-determination, as well as a revamped role and functions for Aboriginal and Torres Strait Islander community-controlled entities.

The Bill's provisions support the *Our Way* strategy and *Making Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019* in the introduction of provisions to allow the chief executive to delegate some or all powers and functions to an Aboriginal or Torres Strait Islander entity.

The proposals around the safe care and connection of Aboriginal and Torres Strait Islander children are both timely *and* realistic in acknowledging that past and contemporary approaches to intervening in the lives of Aboriginal and Torres Strait Islander children and their families have not and are not working. Significant shifts are required to address the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, and their under-representation in universal, early intervention and family support services.

We are also supportive of the changes around obtaining and considering cultural information about Aboriginal and Torres Strait Islander children and families and support for child and family participation in decision making. The changes to 'recognised entity' provisions mean that entities will be a resource for families and communities, rather than a source of 'cultural advice' to departmental officers and also recognise "…that the child and the child's family is the primary source of cultural knowledge in relation to the child" (Explanatory Notes, page 40).

We note there are a range of amendments dealing with replacing references to current 'recognised entities' and when and how they are to be involved in significant decisions. Consistent with our support for the change from how 'recognised entities' have been conceptualised and used to date, PeakCare is also supportive of those amendments.

PeakCare supports the following clauses in the Bill:

- clause 7 – introducing a new principle recognising the right to self-determination; requiring the long term effect of a decision on a child's identity and connection to family and community must be taken into account; inserting all five 'principles' of the Child Placement Principle and ensuring their application to decisions made under the Act
- clause 8 – defining independent Aboriginal or Torres Strait Islander entities, external to the Department, to replace current 'recognised entities', to fully facilitate the child's and family's participation in each significant decision made by the chief executive, litigation director and

authorised officers, in an appropriate place that is appropriate to Aboriginal tradition or Island custom

- clause 9 – reflecting the changes regarding entities providing cultural advice and better support for children and their families to participate in decision making, including in respect of the chief executive arranging for help and support to be offered to a pregnant woman whose unborn child may be in need of protection after birth, noting that the pregnant woman must consent to the entity's involvement
- clause 17 - requiring a case plan for an Aboriginal or Torres Strait Islander child to include, consistent with the five principles, details about how the child will be supported to develop and maintain connections with their family, community and culture (i.e. a cultural support plan)
- clause 21 – providing greater flexibility in how the department and other entities involved in administering the Act obtain and consider relevant cultural advice
- clause 46 – amending section 83 of the Act to reflect the role of a child's Aboriginal or Torres Strait Islander entity and placement of a child with a member of the child's family group, and if that is not possible, in accordance with the placement hierarchy, in order with each lower order option only being considered if the higher order option is not practicable. This includes proper consideration of the views of the child and their family
- clause 48 – enabling the chief executive to delegate some or all functions or powers under the Act in relation to an Aboriginal or Torres Strait Islander child who is in need of protection or likely to become a child in need of protection to the chief executive officer of a suitable Aboriginal or Torres Strait Islander entity with certain safeguards (eg. chief executive officer is 'appropriately qualified', suitable, has a blue card, is an Aboriginal or Torres Strait Islander person, option for conditions on the delegation). The chief executive must have regard for the views of the child and child's family about the delegation, where safe or practicable to seek their views. The chief executive can still exercise a function even where it is delegated and the chief executive's actions prevail to the extent of inconsistencies. The chief executive can seek information from the delegate about the child and be responded to within a reasonably stated timeframe
- clause 49 – only allowing the chief executive to delegate the powers (i.e. not a delegate of the chief executive)

3. A contemporary information sharing regime

In previous submissions, PeakCare has argued that the intent of legislative provisions around the giving and sharing of personal information about children, parents and other family members who have contact with the statutory child protection system (i.e. from 'intake' through various decision making points to 'ongoing intervention' with information held in the Integrated Client Management System and records of other government and non-government service providers) must balance individual children's and adult's rights to privacy and confidentiality, alongside the objectives of

protecting a child from significant harm or the risk of significant harm, including when an unborn child is born, and being helpful in connecting children and their families with the services they need, when they need them.

PeakCare supports the following clauses in the Bill:

- clause 52 – clarifying and simplifying the provisions in the Act to enable the sharing of relevant information while protecting the confidentiality of the information
- clause 53 – in the overarching context of a child's protection and care needs taking precedence over privacy; inserting new principles that, where safe, possible and practicable, consent should be obtained before sharing personal information; and that a child's safety wellbeing and best interests and that of others should be considered before sharing personal information
- clause 54 – requiring the chief executive to make and publish guidelines for sharing and dealing with information under Parts 4 and 5 of the Act
- clause 62 – providing a new definition of 'prescribed entity' and enabling a new category, 'specialist service providers' (which are funded by the Queensland or Commonwealth Government to provide a service to a relevant child or family), to share relevant information (which could be facts or opinion, but not about spent criminal convictions) with each other and to receive information from 'other service providers' for the purposes of:
    - supporting a child who may become in need of protection if preventative support is not provided to the child or the child's family, or
    - helping a child who is in need of protection
- clause 62 - clarifying that information about a pregnant woman and her unborn child can be shared for the purposes of assessing whether the unborn child will be in need of protection after birth and to offer help and support to the pregnant woman.

Clause 71 deals with information sharing about third parties. One aspect of the proposal is enabling the chief executive to give a child in care or a person who was formerly in care information that is about them and also about someone else. Safeguards are proposed including if there is a reasonable belief that disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any person. PeakCare support the intent of this amendment but there is little information in the Bill or Explanatory Notes about whether this will really meet the identity, pragmatic and other information needs of children and young people in care, and care leavers. The extent to which this will address disappointments and anger about the extent of redacted content in case files particularly about parents, siblings, past carers and 'foster siblings', and the reasons for being in care is not clear. Will children in care and care leavers have to ask specific questions to receive information that is about them and also about someone else (eg. who is my father) or will approaches and guidelines for redaction and assessment of the extent to which safeguards are warranted and the nature of supports be redefined? To be clear, PeakCare supports the proposed amendment and hopes that it meets identity and other information needs.

4. Technical and minor amendments

The Bill proposes a range of technical and minor amendments.

Amendments are proposed in relation to Intervention with Parental Agreement (IPA), an area in which inadequate and inappropriate legislative and administrative provisions have been highlighted in recent child death reviews as well as consideration by the Inquiry. PeakCare supports clauses 28 and 29 which respectively propose that:

- an IPA cannot be entered into if the chief executive believes the child would be at immediate risk of harm if the parents ended the agreement
- a child's case plan must detail expectations on the parent and on the chief executive to achieve case plan goals

Clause 31 includes that the court must have regard to any contravention of the Act or of an order or a decision by the chief executive to end an IPA because it was no longer appropriate to meet the child's protection and care needs. PeakCare is of the view that while the intent is understandable (i.e. that the court should have 'all' relevant information about actions, inactions and interventions prior to the matter getting to court), we are uncomfortable about the reference to 'a contravention of the Act'. We note the phrase is already contained in the Act in relation to the making of Court Assessment or Child Protection orders. However, parents and children are the vulnerable and less powerful parties in child protection matters, and the provision implies that parents who have been subject to an IPA can or have contravened the Act. Perhaps the issue is more that they are not able to comply or are not doing things as the department would want them to.

PeakCare supports the following clauses in the Bill:

- clauses 15 and 16 – technical amendments around the role of the litigation director and Director Child Protection Litigation in temporary custody orders
- clause 47 – allowing a medical practitioner to vaccinate a child in the custody of the chief executive without parental consent
- clause 71 – enabling the Police Commissioner to make a written request to the chief executive of the department for information about a deceased child to assist with an investigation and requiring the chief executive to provide any information, noting that the police commissioner is to be alerted if any information about the notifier of harm is included; and that the chief executive can disclose information to a parent of a deceased child or another person acting on behalf of the child if the child died while subject to a child protection order
- clause 73 – improving the department's capacity to participate in research and data analytics projects to allow identifying information to be accessed by researchers if reasonably necessary for prescribed research

- clause 74 – providing that if a child is or is likely to be a witness in a proceeding for an offence of a violent or sexual nature, identifying information about the child must not be published unless authorised by the court
- clause 75 – directing decision makers to consider section 188A about the use of confidential information by police

PeakCare is cautious about clause 72, which seeks to clarify that the chief executive can enter into arrangements with child welfare agencies in other Australian states or territories and New Zealand to provide information about a person or an unborn child that has been acquired in the administration of the Queensland Act to allow the other jurisdiction to perform a child protection function. To be clear, PeakCare supports the intent of the proposal. We are concerned however about the currency and accuracy of information held in the Queensland information system about individual children, their parents, and prospective, approved or former carers. The proposal involves nine child protection systems with different legislative, policy and practice frameworks and nuances such that, for example, decision points, decision-making thresholds, approaches to carer assessments, and working with children checks could mean 'apples' are interpreted or compared with 'oranges' when provided to another jurisdiction.

It is of concern that parents are not even aware that personal and other information about them and their children is recorded in the department's information system, for example at intake, child concern reports, notifications and unfinalised investigations, and that this could be shared with other jurisdictions. Another consideration is around understandings of cultural differences and concern that a lack of cultural competency could mean information is taken out of context or inappropriately used about Aboriginal and Torres Strait Islander families.

While the development of guidelines for sharing information is planned, a range of safeguards around parents' and children's rights will need to be incorporated into implementation plans.

5. Implementation issues

Inevitably when reviewing legislative provisions, attention can be diverted to responding to poor or inconsistent practice and the actions, inactions and interventions of statutory or non-statutory decision makers. This happens to the detriment of considering the intent or deficiencies of the actual provisions. Perceptions about the capacity of workers or services to deliver on the proposed reforms should not mean Parliament resiles from the intent of the reforms embraced in the *Child Protection Reform Amendment Bill 2017*.

Even for provisions retained in the current Act, significant investment will be required by government to implement legislative change including the development and application of supporting resources to embed new policy and operational requirements and impacts across government, judicial and non-government sectors. This will be the case despite the significant and welcome government investment already made in early intervention, intensive family support, and domestic and family violence services.

Part Four:
CONCLUSION

We urge the Committee to consider the positive difference that the amendments around permanency, Aboriginal and Torres Strait Islander children and families, and information sharing will make to the day to day lives of children, young people, families, and communities, in preventing or mitigating statutory child protection intervention and, if it is necessary, for a child's protection and wellbeing on a short or long term basis. The minor and technical amendments are also of value.

PeakCare appreciates the opportunity to make this submission.