PeakCare Queensland Inc.

The Research Director
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

14 April 2014

Dear Health and Community Services Committee

Re: *Public Guardian Bill 2014*

PeakCare Queensland Inc. (PeakCare) welcomes the opportunity to make a submission in response to the *Public Guardian Bill 2014*, which was introduced into the Legislative Assembly on 20 March 2014.

PeakCare is the peak body for child protection services in Queensland. PeakCare has 60 member agencies, 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 (eg. 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. PeakCare has an additional 16 members that are individuals and other entities supportive of PeakCare's policy platform relating to the safety and wellbeing of children and young people, and the support of their families.

PeakCare members directly provide care and support for some of the most vulnerable of Queensland's citizens - children and young people who have been harmed or are at risk of harm from abuse and neglect, particularly those children who have been removed from parental care and placed on an emergency, respite, short or long term basis in foster, kinship, residential and other out-of-home care environments.

Our interest in the role and functions of the Public Guardian relate to children[1] in contact with the child protection system and particularly where there are overlaps for children under dual child protection and youth justice orders. Our comments therefore focus on the Bill as it relates to those

[1] The terms 'children' and 'child' have been used to refer to children and young people aged 0 to 18 years, unless otherwise stated.

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children. As indicated in our submissions and other contributions to the Queensland Child Protection Commission of Inquiry (the Inquiry), we support a re-focusing of the role and functions of the Commission for Children and Young People and Child Guardian (the Children's Commission), notably in respect to individual advocacy for those children and scaling back the community visitor program, which are dealt with in this Bill, and reviewing the working with children check regime, which is covered in other legislative amendments.

We understand that the Public Guardian Bill seeks to provide the legislative framework for responses to Inquiry recommendations about establishing an Office of the Public Guardian and transferring relevant Children's Commission functions to that Office. We are aware that new arrangements must be in place for when the Children's Commission ceases to exist on 30 June 2014.

PeakCare is generally supportive of the Bill and establishment of an Office of the Public Guardian as a statutory body reporting directly to the Attorney-General and Minister for Justice. We commend the provisions relating to the inclusion of children who are no longer within the Public Guardian's scope or who have turned 18 years as 'relevant children' whom the Public Guardian can, under specified circumstances, continue to assist.

Despite openness on the part of government officials to brief PeakCare and others about the thinking behind proposed responses to the Inquiry recommendations, we feel that much of the discussion about how best to progress aspects of responses to recommendations has occurred in the absence of significant input from non-government child protection stakeholders. We are therefore of the view that some of the positions proposed in the Bill warrant further consideration even where the provision is contained in current legislation. We acknowledge that some matters can be dealt with effectively on an administrative basis. In the spirit of co-designing responses and programs that will deliver the Public Guardian's functions, PeakCare offers the following comments about the Bill and we are keen to work closely with the Office of the Public Guardian in designing implementing and reviewing the child-related functions.

Functions of a Community Visitor (child)

In respect to the functions of a community visitor (clause 56), noting that the scale of the program has been publically estimated as reducing to 35% of children in out-of-home care and less routine visiting, PeakCare continues to be puzzled by the lack of clarity and apparent overlap in respect to the various government, non-government and private professional practitioners in contact with a child in out-of-home care, for example, Child Safety Officer, non-government caseworker, foster and kinship carer support worker, legal representative, separate representative, and therapists. In particular, the functions of inspecting and reporting on the appropriateness of accommodation at a visitable home and the accommodation, delivery of services and meeting of a child's needs at a visitable site indicate the imperative for objective, transparent and culturally respectful criteria at the same time as further over-regulation of licensed care services.

It interesting to consider these functions in light of the use of technology to discharge a community visitor's functions. While technology (eg. phone, SMS, email) are useful for communicating with some children, not all children have access to the devices or reliable internet and there is no substitute for talking face-to-face with a child, particularly to facilitate engagement.

Cohort of children and young people within the scope of the Community Visitor program

PeakCare has a number of reservations about the scope of the cohort of children within the ambit of the Public Guardian's child advocate functions and particularly the community visitor program.

We understand that the definitions of 'visitable sites' and 'visitable homes' derive from the *Child Protection Act 1999* and placement of those children who are subject to statutory child protection intervention in out-of-home care under the Act. This means that children who are under guardianship orders to a third party (i.e. relative or other person) will continue to be, as a default position, subject to community visitors. As these children are not in the care of the State, PeakCare's position is that they should not be within the ambit of the community visitor program. These children live with and are cared for by court-approved family or other adults.

For another cohort of children - those placed with a Kinship Carer - it is the intrusiveness into family life that leads us to query whether community visitors are the most appropriate response to meeting the advocacy needs of those children. Similarly, an amendment to the *Child Protection Act 1999* post the Crime and Misconduct Commission's inquiry into foster care resulted in children who are placed with parental consent under a Care Agreement as being in the chief executive's custody. PeakCare is of the view that this cohort should also not be within the ambit of the community visitor program. Until and unless the court determines the child cannot return to the daily care of their parents, these children have guardians - their parent/s. We are also of the view that visiting these groups of children is contrary to the principles for relevant children and children staying at visitable sites (clause 7(2)(a)), which state that a child's family has primary responsibility for their child's up-bringing and development.

Identifying a 'vulnerable' child or young person

As indicated in this submission and elsewhere, PeakCare supports a less intrusive and more advocacy-focused community visitor program for children. We understand that the Bill seeks to provide a legislative framework for the Inquiry recommendation that, rather than visiting each child albeit according to formulaic schedule, visits should be directed to children deemed as 'most vulnerable'. The Bill includes a list of matters to inform the Public Guardian's determination as to a child's vulnerability and whether to visit a child in a visitable home (clause 57(2)). These criteria need to cater for factors that indicate a child's particular vulnerability arising out of a personal characteristic (eg. baby or toddler, child with a disability) and / or the circumstances in which a child finds themselves that would make the child (or any child) vulnerable irrespective of their personal characteristics (eg. child for whom a suitable placement has not yet been identified). PeakCare is of the view that the overarching factors for determining vulnerability should be based in research

evidence about the personal characteristics or circumstances that lead to, or perpetuate, an individual child in out-of-home care being vulnerable. Known factors are poor matching of the child and their needs with the carer and care environment; multiple placements and placement instability; lack of continuity in, disconnection or placement away from family, community and cultural connections; non-local placement or placement away from siblings; and children subject to (further) abuse and neglect in the placement setting. It is important to note that 'vulnerability' is fluid, not static, and program design needs to take this into account. We are particularly concerned by the inclusion of a child's cultural or linguistic background per se, the number of children in the home, and the appropriateness of the accommodation as matters that the Public Guardian will consider. Not only could some of these only be known by sighting the child and / or by the statutory agency providing the information to the Public Guardian about an individual child's circumstances, and any changes in their circumstances, the relevance of some matters is not clear. For example, in respect to a child's age, one of the proposed matters, is it that the child is a baby who cannot verbally communicate or a young adult whose placement is increasingly unstable that would indicate visiting was warranted?

We are puzzled by a community visitor visiting because the chief executive has a reasonable suspicion that the child is in need of protection (clause 57(2)(d)). Doesn't the child already being placed under the Act in a visitable site indicate that statutory intervention is occurring because the child is in need of protection?

In terms of the requirement to regularly visit visitable sites (clause 58), PeakCare is unsure as to the rationale for the perception that children in these settings are any more vulnerable than children moving through foster care settings. Less than 10% of children in out-of-home care in Queensland are placed in residential facilities, one type of visitable site. The service must be licensed under the Child Protection Act, all staff are mandatory reporters, services will all operate under a therapeutic framework as a result of other Inquiry recommendations, and generally the services only accommodate children aged over 12 years.

PeakCare is also of the view that the basis on which visits to children in visitable homes and visitable sites are prioritised and their ongoing frequency and regularity should relate to a child's vulnerability, the functions to be fulfilled by a community visitor, and an avoidance of any overlap with the work that is expected legislatively or administratively of others (eg. licensed care services, Child Safety Officers, the statutory child protection agency, legal representatives).

Notwithstanding that a child can request contact with a community visitor, determination by the Public Guardian that an individual child is 'vulnerable' demands a transparent, evidence-informed decision-making process and one which responds to any negative feelings on a child's part that they have been or have not been considered 'vulnerable enough' to fall within the program's scope. Although the Inquiry, the Public Guardian Bill and our submission use the term 'vulnerable' to describe the children for whom visits and child advocacy services are to be prioritised, positive terminology which avoids a negative and deficits-based approach is recommended for consideration in program design and description.

Initial and ongoing visits by community visitors

The Bill, in PeakCare's view, gives insufficient attention to legislatively prescribing the frequency or regularity of visits to children, to how an initial visit will be triggered, and to how best the individual advocacy needs, for example, of babies and younger children, children who are not made aware of their rights, children whose first language is not English, children without access to transport and private communication mechanisms, children who have 'self-placed', children with disabilities, or children who are not considered vulnerable, will be met.

We also wish to stress the importance of community visitors hearing directly from children themselves (which therefore requires them to be effective and skilled communicators), not through views expressed by others, such as their foster carer. Similarly, children's access to community visitors or child advocacy officers should be able to occur in non-stigmatising and private environments.

Power of entry to visitable locations

While we are aware that provisions in respect to community visitors' power of entry exist in the current Children's Commission legislation, PeakCare suggests that these powers could be perceived as heavy-handed. Notwithstanding that all children subject to statutory child protection intervention are vulnerable and noting the functions the Bill proposes for community visitors (clause 56), it is:

- incongruous that a community visitor could be perceived as reasonably discharging those functions in the manner expected should they feel forced to seek a warrant, and
- highly indicative of a mis-match between those functions and the need for a warrant to, for example, develop a trusting and supportive relationship with the child, inquire about the adequacy of the information given to the child about the child's rights, or the appropriateness of the accommodation.

PeakCare is of the view that there are more reasonable and constructive means to respond to the individual advocacy needs of a child for whom the Public Guardian perceives a need to, for example, look around the home or site and to assess its appropriateness for the accommodation for the child. Should there be concerns on the part of the Public Guardian for a particular child's safety or wellbeing, PeakCare submits immediate contact should be made with the statutory child protection agency and / or the police. In any case, given that the Inquiry recommendations and therefore the Bill seek to re-focus the Children's Commission to individual advocacy as well as address the reported adversarial relationship between Child Safety Services and the (former) Children's Commission, should a carer or person at a visitable home or site refuse, for whatever reason, entry to a community visitor, advice should be sought from the licenced care service and / or the child's Child Safety Officer.

Role, functions and powers of child advocacy officers

The supporting text for the Inquiry's rationale for 'child advocates' (recommendations 12.7 and 12.8) refers to a poorly functioning child protection system in which children are disempowered through a lack of knowledge about, and how to access, their rights. The Inquiry therefore recommended children's access to independent advocacy and mediation. The Bill sets out the functions of a child advocacy officer (clause 13(1)). These include supporting the child and participating in court or tribunal ordered conferences and family group meetings; monitoring the implementation of health, education or other plans; supporting a child at a court or tribunal proceeding; and making submissions, calling witnesses and testing evidence including cross-examining witnesses in tribunal and court assessment and child protection court matters.

PeakCare is concerned about two aspects relating to child advocacy officers. The first concerns the apparent overlap with the roles and responsibilities of other individuals and organisations that have legislated and administrative mandates to care for, advocate for, support, participate in decision making about, represent the child's views and wishes, and / or legally represent children in contact with the child protection system. Our other concern is about the number of people 'eligible' to participate in some of these forums. We are particularly concerned about family group meetings and court-related matters as these are already (although they need not be) stressful settings for children, their parents and extended family, and yet these provisions will effectively make them more adversarial, overwhelming and possibly confusing for non-professional participants. It is difficult to disentangle and therefore understand the differences between the different players and how the right children – those who need advocacy assistance the most – will know how to or the benefits of accessing a community visitor or child advocacy officer unless their Child Safety Officer, licensed care service, carer or other interested parties make them aware.

As with community visitors, we are not supportive of the Bill's provisions in respect to child advocacy officers seeking a warrant to enter a place where a relevant child is staying. Should this provision be used, possible scenarios are young people who have 'self-placed' or who are residing with people or in settings which Child Safety Services has or will not approve, or intimidated kinship carers. The use of a warrant in these and other circumstances does not seem the most appropriate or reasonable response. As with a community visitor, PeakCare submits that contact should be made with statutory agency, Child Safety Officer, licensed care service or, if thought appropriate, the police.

It is important to recognise that when working in social and community services and with vulnerable children and families, initial and ongoing engagement by service users with professionals is relationship based. The role and functions of community visitors and child advocacy officers with children in the child protection system will be ineffective if the system, infrastructure and program design do not actually incorporate mechanisms whereby children have a real opportunity to build trust and respect for those professionals legislatively mandated with advocating on their behalf.

Information exchange

PeakCare is generally supportive of the information exchange provisions in the Bill. The Explanatory Notes refer to the Bill supporting the Public Guardian being able to determine which children may require the Public Guardian's assistance by requiring the chief executive (child safety) to tell the Public Guardian when a reviewable decision is made in relation to a child and when certain orders, interventions and agreements have been made, or cease, about a child (clause 87). While it is obvious that the Public Guardian requires identifying information about in-scope children, the obligation does appear onerous on Child Safety. At 30 June 2013, there were 8,136 children in out-of-home care, including 248 who were not under a child protection order. In 2012/23, 4,368 children were admitted to child protection orders. This does not even take account of reviewable decisions made on a daily basis by Child Safety that would be required to be advised. It seems like a 'needle in a haystack' given the re-focusing of the community visitor scheme and stated overarching focus on the most vulnerable children.

Appointment of community visitors for both children and adults

Another area of concern relates to provision for a person to be appointed as a community visitor for both adults and children. While understanding of the efficiencies especially in remote, rural and regional locations that this offers and not wanting to be disrespectful of persons who currently undertake both roles, PeakCare would prefer, in legislation and in policy, much more detail to recognise the specialised and different skills, knowledge, experience and qualifications required for working with children and young people in the child protection system. Community visitors (child) must be able to communicate effectively with a wide range of children and young people - ages, developmental stages, abilities, cultural backgrounds, languages, needs, vulnerabilities - and navigate a complex child protection system that has many inter-relationships with other service sectors.

Annual report

Should the provisions in respect to community visitors and child advocacy officers having the power to seek entry warrants proceed, PeakCare recommends that the data about the number of applications and the number granted by magistrates be reported annually in the annual report, including non-identifying details about the circumstances prompting the application and the alternate actions taken by the community visitor or child advocacy officer to avoid making the application.

Thank you again for the opportunity to make a submission. Please contact me if you have any queries or require further information.

Yours sincerely

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Executive Director