Submission to the

Legal Affairs and Community Safety Committee

Human Rights Bill 2018

26 November 2018

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PeakCare
Queensland Inc.

Part One:
INTRODUCTION

On 31 October 2018, the Hon. Yvette D'Ath MP, Attorney-General and Minister for Justice introduced the Human Rights Bill 2018.

The stated objectives of the Bill are to:

- establish and consolidate statutory protections for certain human rights
- ensure that public functions are exercised in a way that is compatible with human rights
- promote a dialogue about the nature, meaning and scope of human rights, and
- rename and empower the Anti-Discrimination Commission Queensland as the Queensland Human Rights Commission to provide a dispute resolution process for dealing with human rights complaints and promote an understanding, acceptance and public discussion of human rights

The Bill was referred to the Legal Affairs and Community Safety Committee for detailed consideration with the requirement set for the Committee to report to Parliament by 4 February 2019.

PeakCare Qld Inc. (PeakCare) welcomes the opportunity to make a submission in response to the Committee's invitation for submissions on the Bills.

Part Two:
ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare is a peak body for child and family services in Queensland. Across Queensland, PeakCare has 52 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 foster and kinship care and residential care for 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 15 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 members undertake a wide range of functions with children, young people, family members, foster and kinship carers, and the broader community. Member agencies offer services and programs that are universal, preventative, targeted and / or intensive in nature predominantly in the pursuit of parents, families and communities being able to safely care for their children and support their children to a productive and happy adulthood. Staff and volunteers of many PeakCare

members provide day-to-day care and support, either directly or indirectly, to children and young people who have been removed from their parent's care on an emergency, short or long term basis and are residing in foster or kinship care or within a residential care service.

Clients accessing services are often impacted by one or more challenges such as poverty, parental or child mental health concerns, substance use, cognitive and other disabilities, racism and ethno-centrism, and / or domestic and family violence. The rights of clients from Aboriginal and Torres Strait Islander backgrounds or from culturally and linguistically diverse backgrounds, particularly refugees and migrants, are especially at risk as the interplay of individual, system and structural factors has a compounding, adverse effect on access to justice and rights. Rights violations are undoubtedly a commonplace experience for these groups. They are especially vulnerable and at risk of rights violations because they generally do not have consistent, adequate or equitable access to support services, stable housing, education about their rights, or legal assistance to remedy basic legal issues. While a Human Rights Act would benefit all Queenslanders, PeakCare's submission focuses on human rights legislation as it would address the needs of these groups and encourage equality for all citizens.

This submission supports the introduction of a single Human Rights Act as a means of addressing the inadequacies of current legislation to protect individual human rights in Queensland, and for the purposes of promoting a culture that values freedom, respect and equality. A Human Rights Act would achieve this by ensuring that the government consider individual right values in their decision making, thereby benefiting all Queenslanders.

Part Three:
PEAKCARE'S OVERARCHING REASONS FOR SUPPORTING THE BILL

More than most other human service systems, the child protection system has historically afforded high levels of authority to intrude and make judgements about the personal lives of individuals and families. This has made certain cohorts of individuals and families extremely vulnerable to the imposition of moral and cultural constructs about the safety, well-being and best interests of children and a subsequent lessening or, in many instances, violation of the human rights of either children or their parents or both.

The damage caused by the imposition of these constructs is mostly starkly evident when consideration is given to the devastating impact of the forced removal of Aboriginal and Torres Strait Islander children from their families during the period in Australia's history now commonly referred to as the era of 'The Stolen Generations'. Government policy of the day allowed for Aboriginal and Torres Strait Islander children, unlike all other children, to be legally regarded as 'neglected and destitute' based solely on their race. This justified the forced removal of these children with no legal rights held by their families to argue or appeal these decisions.

The ongoing legacy of this era on Aboriginal and Torres Strait Islander families and communities serves as a vivid reminder of the dangers of a cultural bias being applied to the judgements about what constitutes sound child-rearing practices and the grounds that may warrant the initiation of child protection interventions. It may be argued that these are dangers that continue to exist today – not only in relation to Aboriginal and Torres Strait Islander children, but also those whose families have other cultural backgrounds or who may be discriminated against for other reasons.

History has also demonstrated, for example, the harm caused to many individuals and families in the past when for reasons of morality and conformance with prevailing social norms, economic hardship, or the possession of a physical or intellectual disability by a child or parent, undue pressure was routinely placed on parents - single mothers especially – to relinquish the care of their children and consent to their adoption, their placement in foster or institutional care, or being raised by a relative 'pretending' to be their mother.

Various inquiries have tested assumptions that children, when removed from their parents' care would be safely cared of by others. These assumptions have been discovered to be ill-founded. For example, the vulnerability of children who have lived outside of their family's care has been highlighted within:

- The *Bringing The Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* released in 1997
- *Lost innocents: Righting the record. Report on child migration* produced by the Senate Community Affairs References Committee in 2001
- *Forgotten Australians: A report on Australians who have experienced institutional or out-of-home care as children* produced by the Senate Community Affairs References Committee in 2004
- *Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions* released in 1999
- *Commonwealth Contribution to Forced Adoption Policies and Practices* produced by the Senate Community Affairs References Committee in 2012, and
- most recently, the *Reports of the Royal Commission into the Institutional Child Sexual Abuse* including the Commission's Final report released in December 2017

As a result of these and other inquiries, the child protection system has increasingly incorporated safeguards to protect the rights of all parties throughout the processes used to determine the level of intervention needed to secure the protection of children from harm. Despite these safeguards however, inherent with the struggle to re-shape the child protection system is a failure to fully appreciate that the children and families the system is intended to serve are not an homogenous group. The reasons for their contact with the child protection system vary widely as do their responses to the range of interventions and services they may receive and the pathways made available to them in accessing these services.

While some children and families may be regarded as having a profile that characterises them as 'vulnerable' or 'at risk', exceptions can always be found. Child abuse and neglect is not confined to any particular socio-economic group, nor is it the inevitable consequence for children of single parents or parents who were themselves abused or neglected or who have an intellectual disability or who have formerly spent time 'in care' or who are Aboriginal or Torres Strait Islander.

While services that are targeted towards particular cohorts of children and families may benefit many, there are continuing dangers of value-laden constructs being applied in the name of 'protecting children' that unfairly and unjustly draw attention to and discriminate against some groups – both in relation to who is reported to child protection authorities, the pathways made available to them in accessing services, and the nature and intensity of the response they receive.

PeakCare views the possible introduction of a Human Rights Act as providing a means of further reducing the potential imposition of a moral and cultural construct on the protection of children and ways in which families are judged and replacing this with a values-driven construct being placed on the system's decision-makers and the ways in which they exercise their authorities – ways that are informed by commonly accepted human rights values, principles and standards.

Currently Human Rights in Queensland only exist within provisions of individual pieces of legislation, however, this approach:

- fails to establish specific individual rights for Queenslanders
- does not address the responsibilities of agencies and service providers in relation to human rights, or
- provide avenues of recourse when these rights may have been violated

Existing Queensland laws have been unsuccessful in affording and / or protecting the rights of particular cohorts such as Aboriginal and Torres Strait Islander peoples; children; young people; people with cognitive and physical disabilities; people from culturally and linguistically diverse backgrounds; single parents; the elderly; lesbian, gay, bisexual, transgender and intersex people; and homeless people.

Queensland citizens have witnessed a long line of apologies delivered by both federal and state governments in respect of various matters that have impacted children and families – for example, there has been the apology to the Stolen Generations, the apology to Child Migrants and Forgotten Australians, the apology for Forced Adoptions and, most recently, the apology delivered by Prime Minister Scott Morrison on 21 October 2018 to the victims and survivors of institutional child sexual abuse. All, in essence, represent apologies for policies and practices that have violated human rights in the name of 'child protection'. An Act which specifically addresses Human Rights would move Government past an apologetic era, and display a commitment to the protection of individual human rights that will assist in preventing the need for further apologies to future generations of Queensland citizens.

A single, unified Human Rights Act in Queensland would:

- create a value laden construct which aligns Queensland with the characteristics of a modern democracy
- protect basic rights such as freedom of association, right to privacy of personal information, freedom of speech, and freedom from discrimination which are not adequately protected under existing Queensland law
- incorporate the universally developed principles of the United Nations *Declaration on the Rights of Indigenous Peoples*, *Convention on the Rights of the Child,* and the *International Covenant on Civil and Political Rights* into Queensland law
- ensure that this and future Queensland governments consider individual human rights when developing and reviewing legislation, policies, review rights and other decisions
- provide access to the justice system for individuals when a decision has impeded their rights
- educate Queenslanders about their rights and responsibilities with regards to human rights, and
- contribute to aligning Australia with international expectations and increase its standing amongst other nations

A Human Rights Act must address and protect the individual rights of people who, for various reasons, may be regarded as vulnerable or who may be exposed to periodic vulnerability due to changing circumstances of their lives. PeakCare is specifically concerned about:

- the need to 'close the gap' between Aboriginal and Torres Strait Islander and non-indigenous Australians
- the need for increased investment in health and mental health, education, housing and employment services in regional, rural and remote Queensland
- the ongoing and alarming disproportionate representation of Aboriginal and Torres Strait Islander children and families in the child protection system and the failure to adequately and appropriately support those children, young people, their families and communities
- providing support and services to those who are adversely impacted by domestic and family violence (generally women and children) and those who use violence
- the rights of young people and the responsibility on the Queensland Government to address the current Queensland practice of treating very young children as 'criminally responsible', thereby enabling their incarceration within youth detention centres, and
- affording people who have a disability the right to be treated with dignity, equality and respect

The enactment of Human Rights Acts in both the Australian Capital Territory (ACT) and Victoria has been successful in developing a Human Rights rich culture which promotes scrutinised decision making and accessibility of recourse when breaches have occurred. In both jurisdictions, the Acts have:

- shaped the decision making of Parliament so that human rights are considered when making decisions
- created greater awareness of human rights within the population and public authorities
- provided recourse to individuals when their rights have been breached, and
- directed courts to interpret legislation compatibly with human rights

It may be fully anticipated that that these benefits will also be realised within Queensland.

Part Four:
THE ESTABLISHMENT AND EMPOWERMENT OF A HUMAN RIGHTS COMMISSION

PeakCare strongly supports and commends provisions contained within the Bill that allow for the establishment and empowerment of a Human Rights Commission to:

- investigate, report on and conciliate human rights complaints
- intervene in relevant legal proceedings
- conduct conciliation, and
- conduct research and publicly report on compliance and reform

PeakCare recognises the benefits to be achieved by allowing parties access to non-judicial avenues to resolve disputes about breaches of human rights. Whilst doing so, PeakCare also contends that the Bill unnecessarily limits powers of the Commission by not allowing it to:

- make a legally binding finding about whether a government agency or body, or a particular law, breaches human rights, or
- award remedies to address the harms caused by a breach of human rights

Part Five:
A STANDALONE CAUSE OF ACTION TO A COURT OR TRIBUNAL

PeakCare contends that, in preference to the Bill's provisions that allow for claims pertaining to a breach of human rights to be raised in legal proceedings only if there is another ground on which to which to challenge the decision or action, the legislation should allow for a standalone cause of action for the enforcement of a person's rights in a tribunal or court, similar to the ACT's Human Rights Act.

PeakCare understands that this would be consistent with recommendations 23 and 27 of the 2015 independent review of the Victorian *Charter of Human Rights and Responsibilities Act 2006* concerning the introduction of this provision.

Part Six:
A FULL RANGE OF REMEDIES FOR BREACHES OF HUMAN RIGHTS

PeakCare contends that a key principle that should underpin the legislation relates to ensuring that those whose human rights have been violated have ready and equitable access to an 'effective remedy'. Further, it is argued that:

- their right to a remedy should be determined by a competent authority (i.e. a court or tribunal), and
- remedies should be enforceable

Effective remedies may include:

- halting a proposed law or action which would breach human rights
- compelling a person with delegated decision-making authorities to 're-visit' a decision and, in doing so, give proper and full consideration to the human rights of the affected parties, and/or
- awarding compensation to a person who has not been treated fairly in accordance with their human rights

PeakCare contends that this principle is not fully incorporated within the Bill in that it does not allow for a court or tribunal to order payment of compensation. It is recommended therefore that the legislation be extended to include this provision.

Part Seven:
CONCLUSION

As declared within this submission, PeakCare has specific reasons for supporting the Human Rights Bill relevant to the organisation's field of interest, namely the safety and wellbeing of children and young people and the support of their families. Queensland has a shameful history, as does the rest of Australia, of violating the human rights of either children or parents or both for which Governments, both state and federal, have had to apologise. A Human Rights Act will assist in establishing the laws, systems, practices, and very importantly, a culture, whereby the need to apologise to future generations for the violation of their human rights will be significantly reduced.

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While this submission has focussed on the benefits of this legislation to children, young people and their parents, PeakCare fully appreciates that these same benefits will be achieved by other groups of Queensland citizens who, at different times and for various reasons, may find themselves or members of their families vulnerable in their periodic dealings with a range of systems – be they youth or adult criminal justice systems; aged care; health, mental health or disability services; or education. That just about covers all of us.

PeakCare appreciates the opportunity to make this submission.

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