PeakCare Queensland Inc.

Submission to the

Queensland Parliament

Legal Affairs and Community Safety Committee

# *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*

2 January 2019

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## INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the Queensland Parliament – Legal Affairs and Community Safety Committee's invitation for submissions in relation to the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*.

## ABOUT PEAKCARE

PeakCare is a not for profit peak body for child protection and related family support services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has around 60 members which are a mix of small, medium and large, local, statewide and national non-government organisations that provide prevention and early intervention, generic, targeted and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster and kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered Supporters made up of individuals and other entities with an interest in child protection and related services and who are supportive of PeakCare's policy platform around the safety, wellbeing and connection of children and young people, also subscribe to PeakCare.

## ABOUT PEAKCARE'S SUBMISSION

PeakCare's primary concern is child protection and related services, and as such PeakCare has an interest in reforms relating to the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, particularly those relevant to children with an out of home care experience.

PeakCare's response addresses the proposed legislative provisions in relation to the new offences of *failure to report belief of child sexual abuse* and *failure to protect a child from child sexual abuse* which applies in an institutional context, the extension of the offence of grooming and the establishment of an intermediary scheme.

## PEAKCARE'S RESPONSES TO THE PROPOSED BILL

The following responds to the proposed provisions in the Bill and their apparent intentions.

## *New offence of failing to report belief of child sexual offence*

In extending the failure to report offence beyond an institutional context to include all sexual abuse and extending the requirement to report to all adults in the community, PeakCare understands and supports the stated intent of sending a clear message to the community about the importance of all adults in the community assuming a responsibility for protecting children from child sexual abuse.

However, the literature reveals theoretical and quasi-theoretical arguments both in favour of mandatory reporting laws, and against them. Hence, there is a lack of consensus in the field about the overall theoretically-based merits of mandatory reporting laws (Mathews, B., Bromfield, L., Walsh, K., & Vimpani, G. (2015). *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia - Report for the Australian Government*. Brisbane: Queensland University of Technology). It is therefore important that mandatory reporting is recognised as only part of the effort to protect children.

There is also a concern that mandatory reporting for all adults, and the ensuing criminal liability, may have negative consequences for particularly vulnerable children and families, where family members may be caught up in this offence. Responding to child sexual abuse in a family setting is a vastly different context to the institutional setting originally envisaged for this offence.

The establishment of the offence *when an adult gains information that causes the adult to believe on reasonable grounds, or ought reasonably have caused them to believe, that a child sexual offence is being or has been committed against a child, and the adult fails to disclose the information to the police,* for example, may inappropriately apply to adults with cognitive impairment or learning disabilities; those experiencing family or domestic violence who may, for good reason, feel threatened or fearful of violence, ostracism or intimidation being directed towards themselves and/or other family members were they to disclose information, thereby, in their minds, 'worsening' the situation for their families; those who have been groomed by the person who is engaged in the offending behaviour; those with traumatic lived experiences of interacting with authorities; and/or those from communities with diverse cultural values and beliefs that may impact their capacity to either recognise or appropriately respond to the behaviours that are taking place.

There is a range of circumstances which would impact on a person's capacity to *reasonably believe sexual abuse was occurring*, or impact on a person's capacity to take the required action to report. There may need to be additional protections to excuse liability besides the provision that the disclosure would endanger the safety of a person noting, in particular, that 'safety' should be broadly defined and extend beyond 'physical safety' in order to also incorporate notions of 'emotional', 'psychological' and 'cultural' safety .

PeakCare advocates that a significant investment in public awareness/education and supporting organisations working with children to comprehensively implement the child safe standards, as outlined by the Royal Commission, is likely to have the most impact in improving the safety of children.

## *New offence of failing protect a child from child sexual abuse in an institutional context*

PeakCare supports the proposed amendments to introduce a new criminal offence of failure to protect, targeted at child sexual abuse in an institutional context. As outlined in the Criminal Justice Report, imposing a positive obligation on third parties is warranted in relation to child sexual abuse because of the significant harm and lifelong impact sexual abuse may have on those who have experienced this abuse and their families, the difficulties experienced in disclosing or reporting the abuse, the vulnerability of children, and the risk that those who have perpetrated child sexual abuse may have multiple victims and may continue to offend against children over lengthy periods of time.

The Criminal Justice Report also recommended that foster and kinship care services should be included as relevant institutions, but the offences should NOT apply to individual foster and kinship carers.

The Criminal Justice Report outlines the reasoning for excluding foster and kinship carers from both failure to report and failure to protect offences, which is supported by PeakCare:

> *We consider that it should be made clear that the offence cannot be committed by individual foster carers or kinship carers. While the offence should apply to the services that arrange or supervise foster care and kinship care, we do not consider that individual foster carers or kinship carers should be caught by the offence. Their position is not comparable to those who work within the services and including them would effectively extend the offence to domestic carers in a family setting. (*Criminal Justice Report Parts III – IV p210 and recommendation 33)
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> *While the offence should apply to those with the required knowledge and the power or responsibility to take action in the services that arrange or supervise foster care and kinship care, we do not consider that individual foster carers or kinship carers should be caught by the offence. We consider that it should be made clear that the offence cannot be committed by individual foster carers or kinship carers.* (Criminal Justice Report Parts III – IV p248 and recommendation 36)

In introducing the Bill to parliament, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice, stated that *the failure to protect offence retains an institutional context because the types of offending the provision captures are unique to an institutional context*, which would also appear to support the view that individual carers in family homes should not be targeted by this offence.

Queensland currently has a regulatory environment for out of home care, including licensing of out of home care service providers, the Human Services Quality Framework, working with children checks, processes for appropriate checks and authorisation of foster and kinship carers (including household members and regular visitors) and mandatory reporting.

Out of home care is also subject to a range of oversight mechanisms including service provider and departmental review processes, funding/commissioning and reporting processes, standard of care investigations, complaints mechanisms, as well as independent monitoring and review through the Queensland Family and Child Commission, Ombudsman, Public Guardian and the Community Visitors Scheme.

PeakCare is of the view that foster and kinship carers, who are volunteers caring for children in their own private home, are significantly distinct from staff and volunteers in an institutional setting and continuing improvements to the existing regulatory and oversight measures are more appropriate. PeakCare supports the proposed offence applying to foster and kinship services, in keeping the Royal commission recommendations.

Although there is already a duty of care obligation, a legislative requirement in the *Child Protection Act 1999* for carers to meet standards of care, and an expectation that foster and kinship carers will report suspicions of harm to children, and take action to protect children, including individual foster and kinship carers as having criminal liability in relation to the failure to protect offence may have unintended consequences in terms of the negative impact on recruitment of carers due to the perception of onerous legal responsibilities.

PeakCare recommends the Queensland government ensure these reforms contribute to achieving national consistency (along with mandatory reporting and reportable conduct schemes) which, as noted by the Royal Commission, would be desirable to reduce confusion and reduce the 'compliance burden' for institutions who work across a number of jurisdictions and for families and workers who move interstate.

## *Extension of the offence of grooming*

PeakCare supports the proposed measures to extend the application of the offence of grooming a child to capture conduct directed to persons other than the child (such as parents or carers) which is intended to facilitate sexual access to the child.

It would seem that the difficulty in distinguishing between behaviour which is grooming parents/carers with the intention of gaining trust and facilitating access to a child for sexual exploitation, and similar behaviour which is innocent in intention, would make this offence difficult to prosecute, however the offence recognises the impact of grooming behaviour on others in addition to the child which is important. It may also have the positive impact of promoting more awareness in institutions and in the community generally, about the need to have measures in place to prevent behaviour and circumstances which create risk through opportunity.

## *Intermediary scheme*

PeakCare welcomes the provisions in the Bill and the funding announcement for a pilot intermediary scheme to enable communication support and assistance for vulnerable witnesses to give their most complete and accurate evidence.

Thank you for the opportunity to provide submissions on aspects of the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*.

Yours sincerely

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