Submission to the

Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation paper: Records and recordkeeping practices

17 October 2016

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Part One:
INTRODUCTION

In September 2016, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) released a consultation paper on the topic of records and recordkeeping. Despite numerous national, state and territory public inquiries that have directly and indirectly considered these issues, the Royal Commission continues to receive submissions and testimony that records, recordkeeping practices, records management, and access to personal and other records remain highly problematic for adults who as children lived in formal or informal out-of-home care arrangements. The issues are also of concern to children and young people who currently live in out-of-home care.

The consultation paper proposes five high-level principles and a sixth principle relating to enforcement of the five proposed principles. Consideration is also given to the usefulness of a records advocacy service to provide advice and support to children and adults seeking access to institutional records.

PeakCare welcomes the opportunity to make a submission in response to the Royal Commission's invitation to submit views about the proposals and their implementation.

Part Two:
ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare Qld Inc. (PeakCare) is a peak body for child and family services in Queensland. Across Queensland, PeakCare has 59 members. These organisations are a mix of small, medium and large, local, statewide, national and international mainstream and Aboriginal and Torres Strait Islander non-government organisations. The organisations provide prevention and early intervention responses; training, supervision and support to out-of-home carers; and generic and intensive support to children, young people, adults, families and communities. Most PeakCare members provide child protection and out-of-home care services (e.g. foster and kinship care, residential care, supported independent living services) to children and young people subject to statutory child protection intervention and their families.

In addition, PeakCare's membership includes a network of 23 individual members and other entities supportive of PeakCare's policy platform about the safety and wellbeing of children and young people, and the support of their families.

PeakCare is a silver level sponsor of SNAICC's *Family Matters: Kids safe in culture not care* national campaign, which seeks to address the over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection system and their under-representation in preventative and early intervention service systems. As the Royal Commission's consultation paper notes, in 1997, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal*

and Torres Strait Islander Children from Their Families strongly asserted the centrality of identity and connection, and the relationship with records, recordkeeping and access to records. These issues had however already been canvassed for Aboriginal and Torres Strait Islander peoples in the report of the Royal Commission into Aboriginal Deaths in Custody (RCADIC) released in 1991. RCADIC recommended that Commonwealth, State and Territory governments provide access to archival records about family and community histories to assist people who had been separated from their community and family to re-establish these links (recommendation 53). The recommendation also noted a preference for making records accessible over privacy and confidentiality, a tension that continues to exist today across sectors when records are requested and content is seemingly inconsistently and regrettably redacted.

PeakCare's submission to the consultation paper responds only in respect of records created and maintained by out-of-home care services. It is important to note that child sexual abuse of children and young people who are living or have lived in out-of-home care may or may not have been perpetrated by adults or children associated with the service in which the child resides or was residing. Where the abuse occurred outside the out-of-home care placement, the care service's records should nevertheless contain information about the circumstances of the abuse, responses by authorities and other institutions, and the actions taken by the out-of-home care service. In part this is the case because the rationale for out-of-home care services creating and maintaining care records is far broader than the Royal Commission's terms of reference about child sexual abuse.

Part Three:
FEEDBACK IN RESPONSE TO THE CONSULTATION PAPER

As the Royal Commission has noted, recordkeeping, records management and access remain problematic in spite of numerous inquiries into various aspects of child protection systems and different types of abuse experienced by children and young people in institutional settings, particularly out-of-home care.

Government responses to address concerns include legislative, policy and programmatic provisions and / or contractual arrangements with non-government out-of-home care providers. The latter include obligations about the creation of certain records and their management in respect of privacy, confidentiality, access and retention. In Queensland, for example, out-of-home care service providers' records about a child or young person subject to statutory child protection intervention (i.e. a departmental client) are considered part of the public record. The Department of Communities, Child Safety and Disability Services (the department) developed guidance for services to manage or check the appropriateness of their recordkeeping practices about file creation, security, storage, maintenance, closure and destruction. Service providers are required to transfer client files to the department when service provision to a client ceases or the service ceases to operate. Contractual arrangements refer to the implementation of the guidelines and the regulatory framework includes a licensing regime and compliance with quality standards. The stated rationale is

"to ensure the records of children are secure and accessible into the future and to support Service Providers with their records storage needs"[1].

In respect to accessing care records, a comparative analysis of Australia and the United Kingdom by Goddard et. al.[2] asserts that Australian practices:

- remain inconsistent across government and non-government agencies particularly in terms of preserving records
- there are concerns with redaction of third party information in files
- seeking consents from third parties to access information can be frustrating
- the necessary support to children or adults on the release of records is inconsistent.

Another issue referred to by Goddard et. al. is that children's records about their institutional care are not created, maintained, preserved or released by a single entity – many non-government and government agencies are likely to be involved over time.

PeakCare generally agrees with the proposed five high-level and sixth principles. These are well supported in the consultation paper's discussion of examples and observations. However we are concerned about the missed opportunity to develop overarching principles for recordkeeping practices across institutions and which are inclusive of and specific about records and practices relevant to child sexual abuse.

1. The rationale for generic high-level principles about records and recordkeeping practices

Numerous inquiries into out-of-home care and child protection systems have found that children and young people did not necessarily receive the standard of care to which they were entitled. Contemporary child death, serious injury and other reviews, public inquiries, and research continue to make the same findings. As the Royal Commission has stated, dealing with the short and longer term impacts of institutional abuse, including child sexual abuse, may mean that children, young people and adults take a long time to make sense of, disclose, and / or pursue justice and redress in respect of what happened to them. Having access to records per se and to accurate, well maintained records is important to people who have experienced abuse both at a personal level as well as offering 'proof' of what happened to them.

Similar to the points made in the RCADIC and *Bringing Them Home* reports about identity and connection for Aboriginal and Torres Strait Islander children, institutional out-of-home care records serve as a supplementary memory or unfortunately for some children, a substitute memory, for family, cultural and other details, accepted truths, secrets, and history that parents, siblings and extended family otherwise have 'in their heads'. Generally, items such as photos, reports,

[1] https://www.communities.qld.gov.au/childsafety/partners/resources-and-publications
[2] Goddard, J., Murray, S. & Duncalf, Z. (2013) Access to Child-Care Records: A Comparative Analysis of UK and Australian Policy and Practice, *British Journal of Social Work*, 43, 759–774.

certificates and tickets are also available. These 'records' are enmeshed in daily life. Details are imparted as required, requested or remembered. It follows that institutions have a responsibility to create records about and with children and young people living in out-of-home care that offer the same functionality as 'recordkeeping' by parents, siblings and extended family. When out-of-home care providers are faced with access requests, Murray makes an argument for record holders to be compliant with legislative provisions *and* compassionate when releasing records:

> The information held in these records can be very significant to care-leavers, making sense of who they are and what has happened to them. The records can explain the reasons why children went into care and what happened to their families when they were there, both parts of their life-story that care-leavers may not know otherwise. These records can also provide information about parents, siblings and other family members with whom they have lost contact as children, or may have never known. More than this, the records may be the only traces that care-leavers have of their childhoods. The physical documents may hold importance regardless of their content[3].

Consistent with Murray's comments, *Access to records by Forgotten Australians and Former Child Migrants* states:

> The experience of individual Care Leavers varies considerably, but there are a significant number of Care Leavers who suffered considerably in their time in care. At minimum those placed in care are likely to have lost contact with family and their place of origin. This loss has a major impact on a person's identity and sense of self[4].

The consultation paper acknowledges these purposes in a number of places (eg. pp. 6, 10 and 21) with statements about adults who as children experienced institutional care (and children and young people today) seeking access to their records as a means of finding out about themselves, their childhood experiences, their identity and their connections to family, community and culture. As well as answers to questioning about identity and history, finding answers to more pragmatic queries, for example about health or medical conditions, personality traits or particular interests, is also a driver.

Notwithstanding that child sexual abuse is the focus of this Royal Commission, PeakCare is of the view that specifically referring to 'child sexual abuse' needlessly limits the value and impact that high-level principles about records and recordkeeping practices could have. It is a missed opportunity to establish generic, overarching high-level principles that hone in on records and practices relevant to child sexual abuse in background and supporting statements. Principles around accurate recording, appropriate maintenance, just disposal, accessibility, and consideration of amendment apply across records relevant to out-of-home care. Adopting a more generic approach would in fact be consistent with the ways in which the case studies and supporting discussion have

[3] Murray, S. (2014) Compassion and Compliance: Releasing Records to Care-Leavers under Privacy and Freedom of Information Legislation, *Social Policy & Society*, 13(4), pp.493–503, p.501.
[4] Commonwealth Government. Department of Social Security (2015) *Access to records by Forgotten Australians and Former Child Migrants: Access Principles for Records Holders & Best Practice Guidelines in providing access to records*, Canberra, Author.

been used throughout the consultation paper. For children and young people currently in care and adults who as children lived in out-of-home care, principles issued by the Royal Commission could drive the changes that are evidently still required.

This submission now turns to comments about the proposed principles and other matters.

2. Proposed principle 1: Creating and keeping accurate records in the best interest of the child

PeakCare supports a proposed principle about the best interest of the child as this principle is recognised as paramount in the protection, support and care of children and young people subject to statutory child protection intervention. This principle is welcome because it addresses the needs of children and young people who are in care and will come into care in the future. The principle works well as a generic high-level principle. The only reservation is the reference to 'accurate' records. While accuracy is self-evidently important, other important factors are comprehensiveness and utility. When children, young people or adults access their records now or in the future, the detail needs to be sufficient and helpful, not simply accurate. For children living in out-of-home care, as the consultation paper acknowledges (p.21), the substance of the child's daily life and experiences, joys and achievements, not just the negatives, should be 'recorded'.

3. Proposed principle 2: Accurate records must be created about all decisions and incidents affecting child protection

This principle - the creation of accurate records about all decisions and incidents affecting child protection - specifically focuses on records relating to child sexual abuse. PeakCare reservedly supports the proposed principle. The first is the missed opportunity to establish a generic overarching principle that is inclusive of specific standards around records relating to child sexual abuse. The second is that, similar to our comments about the proposed principle about a child's best interest, we have reservations about the sole qualifier of 'accurate' though note that the supporting statements refer to clarity, objectivity and thoroughness (p.29) of recording at least in regard to child sexual abuse. The third relates to the scope of recording. Again because the Royal Commission is focused on child sexual abuse, the emphasis is placed on decisions and incidents relating to child sexual abuse. This misses the opportunity to refer to the gamut of information that should be recorded about a child's time in care, and therefore the information that is available to children and young people in care and care leavers.

By way of example, and in response to some of the questions about which views are sought, Queensland's *Child Protection Regulation 2011* includes an obligation on licensed care services (i.e. out-of-home care services) to record details about the child, start and end dates of the placement, written complaints and any action taken, breaches of the statement of standards and any action taken, and, specifically for children in residential care, any significant events. The latter refers to

events that are "…significant in the child's life, having regard to the child's age and circumstances. Examples of a significant event relating to the child -

- non-routine medical treatment received by the child
- punishment received by the child at the facility
- contact between the child and the child's family
- receipt by the child of a schooling or sporting award"[5].

Matters of concern - harm or suspected harm and breaches of the standards of care to a child or young person in the care of the service - must be reported to the department (s.6) and, if warranted, to the police. The Regulation also specifies the licensee's responsibilities (s.6) to remind staff of their mandated responsibility to report significant harm caused by physical or sexual abuse, and the detail to be included in the report to the department (s.10). The department can also inspect the service's records kept under section 7 of the Regulation (s.8).

4. Proposed principle 3: Records relevant to child sexual abuse must be appropriately maintained

PeakCare supports proposed principle 3 that records relevant to child sexual abuse be appropriately maintained. As stated above, PeakCare is of the view that this principle should apply to all records created about children and young people subject to statutory child protection intervention. In Queensland, as indicated above, records created by non-government organisations are part of the public record and when services have ceased to be provided to a child, the records must be transferred to the department. The department meets the cost of transferring documents and of long term, secure storage. Information from the department's website explains the Queensland requirements:

> It is in the interest of former and current clients of the department (the department) that their records be secure and accessible throughout the course of their life.
>
> The benefits of this process are that:
>
> - former children-in-care are confident in the knowledge that their records are safe and secure for the duration of their lifetime and accessible at anytime, free of charge, through Right to Information processes
> - Service Provider needs are met through secure storage and accessibility of records for the long term - important as the lifetime of Service Providers is undetermined
> - the process used to retrieve closed records from Service Providers ensures the department (and ultimately the State) can meet recordkeeping obligations as

[5] *Child Protection Regulation 2011* (Qld), section 7

required under the *Public Records Act 2002* and that the State can be accountable to the child[6].

5. Proposed principle 4: Records relevant to child sexual abuse should only be disposed of subject to law or policy

PeakCare supports a proposed principle in respect of legislation setting out disposal schedule/s for records relevant to child sexual abuse. PeakCare does not support the proposal that 'published institutional policies' (p.34) could set out records disposal schedule/s that are contrary to what should be overarching, consistent legislative provisions across Australian jurisdictions. In the context of out-of-home care, we are of this view because children, young people and families are involuntary clients of statutory systems and have little if any choice about the institutions and service providers with which they have contact. Therefore, a principle that allowed individual institutions to operationalise procedures that could effectively be counter to the intent of the Royal Commission is unacceptable. This aspect of the proposed principle could be acceptable if an organisation's policies reflected the legislative framework.

Again however, PeakCare stresses that the proposed principle should apply to all of the out-of-home care records created about children and young people subject to statutory child protection intervention.

6. Proposed principle 5: Individuals' rights to access and amend records about them can only be restricted in accordance with law

PeakCare is of the view that the style and content of the *Access principles for records holders and Best practice guidelines in providing access to records* are helpful and provide good guidance to records holders in discharging their responsibilities. PeakCare supports a proposed principle that individuals' right to access and amend the records about them should be in legislation. The level of transparency around amending personal information that is considered by the individual to be "inaccurate, misleading or out of date" (p.44) will require very clear guidance as well as support mechanisms for the individual concerned.

In terms of question 22, there is perhaps another type of organisation that requires consideration – organisations where services to children and young people are but a small part of the organisation. This can happen with international, national, statewide or even locally-based organisations that experience mission creep or consciously 'move into' or want to move into services for children and young people subject to child protection intervention.

[6] https://www.communities.qld.gov.au/childsafety/partners/resources-and-publications/non-government-service-provider-recordkeeping-procedure

In terms of question 23, PeakCare is of the view that access to care records and related personal records (eg. birth certificates) should be free of charges and fees. Given the history of abuse and neglect of children in out-of-home care, this is or would be a small contribution by government to redress the impacts of loss of identity and sense of self.

In terms of question 24, PeakCare is of the view that practical assistance and emotional and therapeutic supports should be available to individuals to access, read and interpret their care records, and any supporting documentation (eg. glossary) or statements (eg. rationale for redaction).

In terms of question 25, PeakCare supports the development of nationally consistent standards for redaction.

7. Additional matters: Proposed principle 6 and establishing a records advocacy service

PeakCare supports the concept of proposed principle 6 to cover records and recordkeeping in institutions in sectors other than out-of-home care.

PeakCare supports the proposal to establish a records advocacy service to provide advice and support to victims and survivors of child sexual abuse seeking access to institutional records.

Part Four:
CONCLUSION

Research and anecdotal information identifies the criticality of accurate and accessible records and just recordkeeping practices to children, young people and adults who are or have experienced out-of-home care. Their importance lies in providing insights into identity and memories that may otherwise be missing. The records serve multiple purposes for the subject (and the institution) and principles per se are clearly warranted, as are principles for records that are relevant to child sexual abuse.

PeakCare supports the sentiments underlying the five proposed principles, and recommends that the principles be made more generic. We also suggest that the principles refer to more than the accuracy of records.

PeakCare appreciates the opportunity to make this submission.