



PeakCare

Queensland Inc.

redress@childabuseroyalcommission.gov.au

5th March 2015

Dear Sir / Madam

Re: *Redress and civil litigation*

PeakCare Queensland Inc. (PeakCare) welcomes the opportunity to make a submission in response to the *Consultation paper on redress and civil litigation* released by the Royal Commission into Institutional Responses to Child Sexual Abuse.

PeakCare is a peak body for child protection services in Queensland. PeakCare has 63 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, young people and families who are at risk of entry to, or in, the statutory child protection system. PeakCare has an additional 22 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 deliver care and support for some of the most vulnerable of Queensland's population - children and young people who have been harmed or are at risk of harm from parental abuse and neglect.

Our interest in making a submission on this issue furthers our advocacy work and involvement with three state-based inquiries in the last 15 years into Queensland's child protection system, in addition to Commonwealth inquiries into the experiences and treatment of children and young people who were voluntarily or involuntarily separated from their parents. The intricacies and circumstances of these children's removal; placement; type, severity and impact of the abuse; service provider; supporting evidence and avenues for seeking redress; coupled with the lifelong impacts of the abuse and neglect, have all contributed in one way or another to the inadequacies of the few redress schemes instituted by Australian governments. Although but one aspect of redress, the availability of financial resources for making payments to claimants is a significant issue.

Fairness must be at the centre of devising a redress scheme, and as the consultation paper states, fairness is best not seen in isolation from justice and equality.

Scope and parameters

PeakCare agrees that redress encompasses a range of elements as set out in the consultation paper. Notwithstanding that PeakCare supports redress in response to a broader range of abuse and neglect than sexual abuse of children in institutional settings, we support the general principals of providing redress as set out in the consultation paper (page 9).

Possible structures for providing redress

PeakCare supports an independently administered national redress scheme in which prospective claimants have access to a user-friendly gateway to a fair and equitable redress scheme covering the one or more Commonwealth, state or territory government, or non-government provided institutions in which the person alleges they experienced, or are experiencing, abuse or neglect as a child. PeakCare supports claims in respect to current abuse by a child's parent or guardian fitting within this structure.

The challenges of achieving this arrangement are acknowledged. Independent administration is open to criticisms of diverting attention and resources from the direct delivery of 'services', in this case the elements of redress. On the other hand, independent administration acknowledges that the process of redress schemes is as important as the elements and outcomes. A national scheme recognises that service providers operated across state and territory boundaries and prospective claimants may allege abuse occurred in more than one institution. As noted however in the consultation paper, if the commonwealth, state and territory governments as past providers and regulators of institutional settings, and non-government organisations that operated the settings do not agree to a 'national' scheme, the overarching principle of equity is undermined.

Should state and territory administered schemes eventuate, independence of the process from government or non-government providers remains a priority, as do equitable outcomes. PeakCare supports the establishment of a national mechanism to coordinate and monitor equitable, consistent application and assessment processes and outcomes for redress schemes.

Direct personal responses and the interface with a redress scheme

PeakCare supports the assertion in the consultation paper locating the significance and meaning of contact by a person in authority in the abusing organisation with the person seeking the apology, assurance or other direct personal response. PeakCare concurs with the assertion in the consultation paper that the organisation's willingness to participate is central to success and would need to be linked to but not independent of the organisational structure for the redress scheme/s.

For prospective claimants or their advocates, the interface between a redress scheme and direct personal responses should be seamless yet transparent such that approaches to the 'redress scheme' get the desired response/s (eg. financial payment, paid access to services, personal apology) through the scheme, from the responsible organisation/s. The obligation should not be on the claimant to understand any intricacies about the different elements of redress or the source of the response. Given that a direct personal response relies on the abusive organisation having personal contact details of the claimant, it would seem logical for the redress scheme to facilitate that as the only or as one element of the claimant's wishes in respect to redressing their experience of institutional care.

PeakCare generally supports the suggested principles for an effective personal response, particularly the points that stress clarity, transparency and congruence between what is on offer and what eventuates for individuals. There also needs to be clarity about the organisations that no longer exist so that expectations about the availability of a direct personal response are not unnecessarily raised. Also, in supporting a broader focus than child sexual abuse, the deliverers of the messages (as well as those involved in implementing redress schemes) will require training about the nature and impacts of trauma, loss, grief, abuse and neglect.

Counselling and psychological care

PeakCare supports the suggested principles for the provision of counselling and psychological care. Of particular importance are those that recognise that services should be available on an episodic basis and / or for as long as needed, and delivered by appropriately qualified and experienced practitioners. Consideration of access by family members through the redress scheme is also worthy.

The principles are currently undermined by an inadequate spread of services; changes in government policies, programs or investment; and inequitable and inadequate access to the range of required care. PeakCare supports the point made in the consultation paper that enhanced or new services, whichever is appropriate, should not duplicate but address access, equity and spread issues. In terms of the relationship between the principles and their implementation through redress, the consultation paper proposes the suggested principles include that redress funding should support flexibility and choice in services, as opposed to 'redress' services. Whatever the eventual recommendation made by the Royal Commission, PeakCare's concern is to ensure that 'choice' is real. That is, governments and other institutions ensure that gaps in regional, remote, specialist, and culturally competent and safe services are addressed. Seeking the participation of adults who as children experienced abuse in institutional care in the design, implementation and review of programs, services and regulatory frameworks is an important mechanism to recognise their expertise in the spirit of co-design.

As to which organisations – government and / or past providers of services of institutional care - should bear the cost of funding counselling and psychological care, PeakCare is of the view that as long as prospective claimants are sceptical about services provided by or direct contact with organisations they believe responsible for abusing them, funding must be separate to actual service provision.

Monetary payments

As stated in the consultation paper, clarity about the purpose of a monetary payment and what the payment represents is critical to prospective claimants and those who receive a payment understanding that aspect of a formal acknowledgement of their past experience and / or ongoing legacy. PeakCare supports the view that payments which people have already received through redress schemes or civil litigation should be taken into account in future claims. Having not kept records of any payments should not disadvantage a future claim.

Redress scheme processes

PeakCare supports a broad definition of ‘institution’, as covered in the Royal Commission’s terms of reference and is supportive of the discussion about there being a connection between the institution and their responsibility to prevent, respond to and /or manage any suspicions or allegations of abuse within the settings consistent with legislated or moral obligations. Noting the focus of this Royal Commission on an albeit broad consideration of ‘sexual abuse’, PeakCare believes that redress scheme/s should apply broadly as one means of acknowledging the range of abuse types and neglect that children have experienced and reportedly continue to experience in institutional settings. It is respectfully suggested that the Royal Commission’s findings and recommendations could reasonably refer to this view being made throughout the consultations.

PeakCare supports an approach where no fixed closing date is managed and there is a multi-pronged communication strategy to promote the scheme. Designing the scheme’s application and assessment process and supporting communication strategies is best done in consultation with individuals and the organisations of which some are members (eg. CLAN, Queensland’s Historical Abuse Network). PeakCare supports successful and unsuccessful claimants having access to a review process for decisions made by the redress scheme. PeakCare supports the availability of support and / or counselling for prospective claimants and family members during redress application process. Certainly the scheme and in turn any institution subject to a claim should comply with legal requirements to report or disclose abuse should the alleged abuser still be associated with the institution.

PeakCare is heartened that the Royal Commission has reached the view that it is unlikely that situations of similar magnitude to the Stolen Generations, Forgotten Australians and Former Child Migrants will occur in the future (page 164). Of particular interest to PeakCare however is the increasing number of children in out of home care and specifically the number and rate at which Aboriginal and Torres Strait Islander children are placed in out of home care. It is of concern that the significance of the Child Placement Principle and the five core elements – prevention, partnership, participation, placement, connection - are not widely understood and that placements are not consistently made in compliance with the preferred placement hierarchy. Until and unless every jurisdiction has specific strategies in place to reduce the over-representation of Aboriginal and Torres Strait Islander children in out of home care, their cultural safety and wellbeing is at risk.

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

Yours sincerely

Lindsay Wegener
Executive Director