Submission No 17

SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

Organisation: Bravehearts

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Child Sexual Assault Offenders

Inquiry into the Sentencing of Child Sexual Assault Offenders

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About the Authors

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Hetty Johnston is the Founder and Executive Director of Bravehearts Inc. Hetty is the author of the national awareness campaign, 'White Balloon Day', 'Sexual Assault Disclosure Scheme', 'Ditto's Keep Safe Adventure' child protection CD-Rom and her autobiography, 'In the Best Interests of the Child' (2004). Hetty has been a contributing author to various books including, 'Crime on my Mind', and 'Women on Top'.

In 2005, Hetty was announced as a finalist for the 2006 Australian of the Year Awards – she is the recipient of two Australian Lawyers Alliance Civil Justice Awards (2003, 2004) and was named a finalist in the 2008 Suncorp Queenslander of the Year Awards. She was awarded a Paul Harris Fellowship in 2010 and is a Fellow of the Australian Institute of Community Practice and Governance (March 2010). In early 2009, Hetty was recognised as one of approximately 70 outstanding leaders throughout the world, receiving the prestigious annual Toastmasters International Communication and Leadership award. In 2013 Hetty was awarded Northern Australia's Ernst & Young Social Entrepreneur of the year. Hetty is a member of the International Society for the Prevention of Child Abuse and Neglect and sits on the Federal Government's Cybersafety Working Party.

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About Bravehearts Inc.

Our **Mission** is to stop child sexual assault in our society.

Our **Vision** is to make Australia the safest place in the world to raise a child.

Our **Guiding Principles** are to at all times, do all things to serve our Mission without fear or favour and without compromise and to continually ensure that the best interests and protection of the child are placed before all other considerations.

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention; Educate, Empower, Protect – Solid Foundations to Make Australia the safest place in the world to raise a child. Our activities include but are not limited to:

EDUCATE

- Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- Personal Safety Programs for older children & young people and specific programs aimed at Indigenous children.

EMPOWER

- Community awareness raising campaigns (Online and Offline) including general media comment and specific campaigns such as our annual national White Balloon Day.
- Tiered Child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.

PROTECT

- Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- Specialist child sexual assault counseling is available to all children, adults and their non-offending family support.
- Policy and Legislative Reform (Online and Offline) - collaboration with State Government departments and agencies.

Bravehearts Inc. is a National organisation, it is a registered Public Benevolent Institution, registered as a Deductible Gift Recipient, operates under a Board of Management and is assisted by State based Community Regional Committees, Executive Advisory Committees and a Professional Finance Committee.

Introduction

In responding to the current Inquiry into the Sentencing of Child Sex Offenders Bravehearts is reminded of the words of the Hon Justice Peter McClelland on the first day of Public Hearings for the Royal Commission into Child Sexual Abuse:

> "I have been called upon to review many…sentences imposed upon people convicted of the sexual abuse of children, but…until I began my work with the commission I did not adequately appreciate the devastating and long-lasting effect which sexual abuse, however inflicted, can have on an individual's life."

Child sexual assault is a hidden but significant problem in every community in Australia.

One in three girls and one in six boys will be sexually abused in some way before the age of 18 years *(Australian Institute of Criminology, 1993).* Experts estimate that less than one in ten of these children will tell.

Research clearly shows that individuals who are sexually assaulted as children are far more likely to experience psychological problems often lasting into adulthood, including: Post Traumatic Stress Disorder, depression, substance abuse and relationship problems. Child sexual assault does not discriminate along lines of region, race, creed, socio-economic status or gender; it crosses all boundaries to impact every community and every person in Australia.

Research suggests that many adults are unaware of effective steps they can take to protect children from sexual assault (Australian Childhood Foundation, 2009). Most do not know how to recognise signs of sexual assault and many do not know what to do when sexual assault is suspected or discovered.

<u>Prevalence:</u>
45% of females and 19% of males have been the victim of 'non-contact inclusive' child sexual abuse and 39% of females and 13% of males have been the victim of 'non-contact exclusive' child sexual abuse (Goldman & Padayachi 1997).

It is estimated that 1 in 4 girls and between 1 in 7 and 1 in 12 boys are victims of sexual abuse (James, 2000).

Research has estimated that up to 45 per cent of females and up to 19 per cent of males have been victims of sexual abuse during their childhood. (Queensland Crime Commission, 2000)

Girls and boys of all ages are sexually abused and victims are sometimes toddlers, young children and even babies (NSW Child Protection Council, 2000).

13% of calls to the New South Wales Rape Crisis Centre were related to child sexual assault (Sun Herald, 8th January 2006. p.7).

Adult retrospective studies show that 1 in 4 women and 1 in 6 men were sexually abused before the age of 18 (Center for Disease Control and Prevention, 2006)

Research shows a staggering 45% of women aged 18-41 were sexually abused as children by family members (30%), friends or family friends (50%) or strangers (14%). 75% of the abuse involved some contact, most of which was shockingly severe (Watson, 2007).

A University of Queensland study found that 10.5% of males and 20.6% of females reported non-penetrative child sexual assault before the age of 16 and 7.5% of males and 7.9% of females reported penetrative child sexual assault before the age of 16. (Mamun, Lawlor, O'Calloghan, Bor, Williams. & Najman, 2007)

Australian Bureau of Statistics report that 25% of victims of 'all' sexual assaults reported are aged between 10 and 14 (Australian Bureau of Statistics, 2009).

Price-Robertson, Bromfield and Vassallo's (2010) summary of Australian prevalence studies estimates that four to eight percent of males and seven to 12 percent of females experience penetrative child sexual abuse and 12 to 16 percent of males and 23 to 36 percent of females experience non-penetrative child sexual abuse.

Disclosure & Reporting:

A 1998 study involving 400 clients of Family Planning Qld, found 55% of all the women in the sample had experienced childhood sexual assault before the age of 16. Only 36% of those who had experienced assault had ever told anyone of those events prior to their disclosure during the study interview. Only 8 victims (3.5%) had taken legal action against their offenders and only five were aware of the outcome of those actions (two offenders were convicted, two had no further action taken and one resulted in a criminal record only) (Queensland Criminal Justice Commission, 1999).

About half of the victims of child sexual assault never report the assault to another person and many do not disclose until they reach adulthood (Queensland Crime Commission, 2000).

Project Axis sought information from 66 non-government schools about their policies for dealing with suspected child sexual assault - only six had a specific policy in place. Of the 51 community groups contacted only three had established any policy for handling suspicions or disclosures of child sexual assault (Queensland Crime Commission, 2000).

169 child sex offenders who admitted having committed at least one sexual offence against a child later disclosed offences concerning 1010 children (748 boys and 262 girls) of which only 393 (38.9%) were reported to have been associated with official convictions (Smallbone & Wortley, 2000).

One in five parents who were aware that their child had been sexually assaulted did not report the assault (Smallbone & Wortley, 2000).

One in three people in NSW suspect a child they know has been sexually assaulted but 43% of those did not report the abuse to authorities (Department of Community Services, 2006).

One third of people surveyed felt they only had a minor role to play in protecting children (Department of Community Services, 2006).

78% of people surveyed had some hesitation about whether they would be able to identify abuse of neglect if they came across it (Department of Community Services, 2006).

Offenders:

The age profile of offenders in sexual assault varied with the nature of the crime. Overall 23% of sexual assault offenders were under age 18 and 77% were adults. Juveniles were a substantially smaller proportion of the offenders in forcible rape (17%) than in sexual assaults with an object (23%), forcible fondling (27%) and incidents of forced sodomy (36%) (Bureau of Justice Statistics, 2000).

International research suggests that sex offenders are generally older than most other types of offenders. The mean age of over 9,000 sex offenders was found to be 36 years (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002).

Most children know the perpetrator with studies estimating between 10-30% of offenders were strangers (National Child Protection Clearinghouse, 2005).

Non-biological family members (stepfather or mother's defacto) are disproportionately represented as child sex offenders. For example, Russell (1989) reported that girls living with stepfathers were at a markedly increased risk: 17% had been sexually assaulted compared with 2.3% of girls living with biological fathers (National Child Protection Clearinghouse, 2005).

European researchers found that 78% of offenders charged with downloading or possessing abusive images had sexually assaulted children prior to, or soon after viewing images. On average, each offender had assaulted up to 30 different children (Personal correspondence with Professor Freda Briggs 5th January 2006).

Female sex offenders are responsible for 6% of all reported cases of sexual assault against children (ChildWise study, cited in The Australian, 7th March 2006)

Men were by far the greatest perpetrators of sexual assault, responsible for 663 cases compared to only 63 (8.7%) by women (Department of Child Safety, 2007).

For the offence of sexual assault 34% of defendants were aged 45 and over (Australian Bureau of Statistics, 2007)

Impact

Adults abused during childhood are:

- more than twice as likely to have at least one lifetime psychiatric diagnosis
- almost three times as likely to have an affective disorder
- almost three times as likely to have an anxiety disorder
- almost 2 ½ times as likely to have phobias
- over ten times as likely to have a panic disorder
- almost four times as likely to have an antisocial personality disorder (Stein, Golding, Siegel, Burnam & Sorenson, 1988)

Young people who had experienced child sexual abuse had a suicide rate that was 10.7 to 13.0 times the national Australian Rates. A recent study of child sexual abuse victims found 32% had attempted suicide and 43% had thought about suicide. (Plunkett, Shrimpton & Parkinson, 2001)

It has been well-documented that the sexual abuse of children has a range of very serious consequences for victims. Zwi et al. (2007) list depression, post-traumatic stress disorder, antisocial behaviours, suicidality, eating disorders, alcohol and drug misuse, post-partum depression, parenting difficulties, sexual re-victimisation and sexual dysfunction as some of the manifestations of child sexual abuse among victims.

Young people who had experienced child sexual abuse had a suicide rate that was 10.7 to 13.0 times the national Australian rates. A recent study of child sexual abuse victims found 32% had attempted suicide and 43% had thought about suicide (Plunkett & Shrimpton, 2001).

Young girls who are sexually abused are 3 times more likely to develop psychiatric disorders or alcohol and drug abuse in adulthood, than girls who are not sexually assaulted. (Day, Thurlow, & Woolliscroft, 2003; Kendler, Bulik, Silberg, Hettema, Myers, & Prescott, 2000)

Among male survivors, more than 70% seek psychological treatment for issues such as substance abuse, suicidal thoughts and attempted suicide. (Walrath, Ybarra, Holden, Liao, Santiago, & Leaf, 2003)

A University of Queensland study found that women who experienced penetrative child sexual assault had on average. a significantly higher body mass index (Mamun, Lawlor, O'Calloghan, Bor, Williams. & Najman, 2007)

Compared to those with no history of abuse, annual health care costs were 16% higher for women who reported childhood sexual assault. (Bonomi, 2008)

Women with a history of sexual abuse were more likely to use mental health services, pharmacy services, primary care services and speciality care. (Bonomi, 2008)

Access Economics, Monash University and the Australian Childhood Foundation found that child abuse costs the Australian community between $10 billion and $30 billion each year (Australian Childhood Foundation media release, 3rd September 2009)

Rates of suicide was significantly higher for child sexual assault victims than comparison groups, with child sexual assault victims 18.09 times more likely to commit suicide (Cutajar, Mullen, Ogloff, Thomas, Wells, & Spataro, 2010).

Rates of accidental fatal overdoses was significantly higher for child sexual assault victims than comparison groups, with child sexual assault victims 49.22 times more likely to commit suicide (Cutajar, Mullen, Ogloff, Thomas, Wells, & Spataro, 2010).

Although most (77%) child sexual assault victims did not have an official criminal record, child sexual assault victims were 4.97 times more likely than their peers from the general population to have been charged with an offence and this difference remained significant for both male and female victims (Ogloff, Citajar, Mann, & Mullen, 2012).

Sentencing Issues

Many of the issues raised in this submission have been canvassed in researched position papers. These can be made available to the Joint Select Committee on request or via the Bravehearts' website.

Standard Non-Parole Periods

Bravehearts wholeheartedly supports the use of standard non-parole periods in relation to sexual offences against children. Although it is argued by some in the legal sector that the legislation is an infringement on the independence and sentencing discretion of the judiciary, we believe that the prescription of standard non-parole periods allows for coherency in sentencing, promotes the proportionality principle and, as such, is consistent with one of the basic premises of our justice system – that the punishment must fit the crime.

Standard minimum non-parole periods should be an expression of legislative intention as to the minimum periods of actual imprisonment to be served. The aim of this type of legislation should be to ensure consistency and appropriateness in response to serious offending.

Standard minimum non-parole periods have been identified as:

a) Ensuring that the offender is adequately punished for the offence;
b) Recognising the harm done to the victim of the crime and to the community;
c) Protection of the community;
d) Promoting the rehabilitation of the offender;
e) Making the offender accountable for his or her actions;
f) Denouncing the conduct of the offender; and
g) Preventing crime by deterring the offender and other persons from committing similar offences.

Bravehearts considers that there should be a number of key objectives. These include:

- To provide consistency and certainty in the sentencing process;
- To provide transparency in the sentencing process;
- To increase community confidence in the criminal justice system through providing a system that meets community expectations;
- To minimise court costs; and
- To increase admissions of guilt, which has the impact of reducing levels of re-traumatisation of victims through the criminal justice processes.

We would also like to emphasise the need for access to treatment programs to be undertaken during this time.

Bravehearts position is that any sexual or serious violent offence that carries a prescribed maximum sentence of 10 years or more should be subject to a standard non-parole period scheme.

We believe that given the range of objective seriousness in many of the offence categories, the scheme should provide a defined standard non-parole period term for each level of objective seriousness. For example, the defined term should be set at:

- 30% of the prescribed maximum sentence for low-range offences
- 50% of the prescribed maximum sentence for mid-range offences
- 80% of the prescribed maximum sentence for high-range offences

Consideration of Mitigating Factors

Courts have traditionally held that the otherwise good character and 'good works' of an offender may carry some weight by way of mitigation of penalty. An offender's prior good works, good reputation, or absence of any earlier involvement with the criminal justice system are accepted as indicative of good character and, normally, as having a mitigating effect on the sanction to be imposed.

Child sexual offenders, in particular, more often than not present as trusted and 'good' members of the community. While with other offender types evidence of good character and conduct may be a redeeming feature, this very aspect of a sex offender's public image is all about gaining the trust of children, parents and carers and the community generally. The 'good character' of child sex offenders is the very mask behind which the crimes are committed.

Specifically, in relation to the issue of the perpetrator being a person of 'good character', It is our contention that in dealing with sexual assault matters, and specifically child sexual assault matters, the factor of a perceived "good character" should not be considered and should not impact on sentencing.

Two Strikes Legislation

In July 2012 the Queensland Government passed a bill enforcing a two strikes approach for repeat child sex offenders, lobbied for by Bravehearts. The two strikes approach applies to sex offenders who have previously been convicted of an offence that attracts a maximum sentence of life imprisonment and who have been released and who then commit another sexual offence that attracts a maximum sentence of life.

As a community we value the rule of law, the presumption of innocence and principles such as that punishment should only follow a finding of guilt. But we are also concerned about the need to protect ourselves and others from the risk of future harm – particularly from those whom we know to be, or believe to be, dangerous. At no time are these concerns brought more sharply into focus than when convicted child sex offenders reach the end of their sentence and are due to resume their lives back in the community.

While Bravehearts respects that the concerns around multiple strikes legislation are legitimate in relation to the general introduction of laws, it is our position that child sex offences need to be considered with the utmost gravity. The reality is that child sex offending can be a compulsive, addictive behaviour that can damage victims for life.

Our communities are getting increasingly concerned about the sexual assault of children it is time that our legislation and courts reflected this. Bravehearts is advocating for a specific, targeted multiple strike legislation as a response to habitual/persistent child sex offenders.

Our proposal is that:

1. The two-strikes legislation be focused on adult offenders only.
2. For any first conviction of a contact child sex offence there be a mandatory term of detention and completion of a mandatory treatment program.
3. Any dangerous offender with a previous contact child sexual offence is to receive a mandatory 20 year sentence for any second serious child sexual offence

Continued Detention of Dangerous Sex Offenders

It is not unusual to incarcerate offenders for terms longer than those which may otherwise be imposed as a 'preventive' measure designed to protect the community. Such forms of imprisonment are generally referred to as 'preventive detention' schemes.

Courts across Australia have always had the capacity, at the time of sentencing, to provide an indefinite term for prisoners if it is considered appropriate (for example, under Section 163 of Queensland's *Penalties and Sentences Act 1992*, Section 23 of South Australia's *Criminal Law (Sentencing) Act 1988* and Section 18 of Victoria's *Sentencing Act 1991*). The difficulty in ordering indeterminate sentence at time of sentencing is that there is little basis to judge risk. Courts cannot take into account whether or not the offender will agree to undertake or even complete a rehabilitation program let alone be provided with an assessment of it's effectiveness. The stated reason why this type of sentencing is rarely if ever used is that pre-sentence assessment of risk provides little indication on whether or not the offender is likely to re-offend in a number of years time after he or she has completed their head sentence.

In 2003, Queensland introduced the *Dangerous Prisoners (Sexual Offenders) Act 2003* (June) allowing the State's Attorney General to apply to the Supreme Court for a continuing detention order to be imposed upon a prisoner. The Queensland law was unique because it authorises the continued incarceration of a sex offender who has served his or her term of imprisonment, but who is judged by a court to represent an ongoing risk to the community if released. In addition, such sentence is imposed, not as part of the sentencing process, but as an administrative civil procedure at the end of a person's sentence.

The main premise of such legislation is that there are a number of offenders who remain a significant risk to the community at the completion of their sentence. Since its introduction in Queensland in 2003, other Australian States have followed with similar legislation as a way of managing dangerous offenders. In 2006 both Western Australia (*Dangerous Sexual Offenders Act* 2006) and New South Wales (*Crimes (Serious Sex Offenders) Act 2006*) introduced versions of the Queensland Act, in 2007 South Australia followed suit (*Criminal Law (Sentencing) (Dangerous Offenders) Amendment Bill 2007*) and in Victoria the *Serious Sex Offenders (Detention and Supervision) Act 2009* came in force in January 2010.

Clearly there are some offenders who pose such a danger to the community that they must be kept in prison indefinitely. Bravehearts argue that this group would comprise of all recidivists and others whose offences were so heinous as to indicate a life-long high risk. It is unreasonable to expect a Judge at the sentencing stage to assess when, or even if, such individuals will be safe for release. Continuing detention legislation allows for offenders to be monitored in terms of their progress while in custody, their responsiveness to treatment and for a full assessment of their level of risk.

Bravehearts fully supports the continued detention of sexual offenders who pose a continued risk of re-offending.

Civil Commitment: The Coalinga Model

Coalinga State Hospital opened in California on September 5, 2005. It is a maximum security civil-commitment facility built to ensure that sexually violent offenders are kept out of the community.

The hospital houses more than 900 sexually violent predators (Gabrielson, 2011) deemed too a high risk of reoffending to be released. These offenders are housed indefinitely at the hospital until they are deemed no longer a danger to the community.

In California all prisoners with sexual assault or pedophilia crimes are flagged and reviewed six months prior to parole (California State Auditor, 2011). To be labeled under the category of sexually violent predator an individual must:

- have at least one identified victim,
- have a serious mental illness, and
- must have established a relationship with a person with the intent to cause victimisation.

Less than 1% of the 100,000 registered sexual offenders in the state of California fall into the sexually violent predator category (California State Auditor, 2011).

Prior to parole, the offender is assessed by two independent evaluators (licensed mental health professionals). If both professionals agree that the offender meets the criteria to be categorised as a sexually violent predator, the offender is sent to Coalinga State Hospital for treatment. If one agrees and the other does not, an additional two

evaluators review the prisoner's history. If those final two reach agreement, the prisoner is then civilly committed to the hospital.

Currently, California law allows sexually violent predators to be committed to the hospital indefinitely (under what is termed “Jessica's Law”) as long as they are receiving 'treatment'. Treatment at Coalinga is intensive, and requires admission of guilt, as well as polygraph and phallometric testing. Offenders must successfully complete four stages of treatment before being released and subject to outpatient treatment. The four treatment phases include (sourced from www.dmh.ca.gov/services_and_programs/state_hospitals/coalinga):

1. **Treatment readiness**: facilitates the offender’s transition from prison to the therapeutic environment. Educates offenders on the hospital culture, interpersonal skills, anger management, mental disorders, victim awareness, cognitive distortions and relapse prevention.
2. **Skills acquisition**: focus on personal therapy. Teaches coping strategies, behavioural skills, prosocial thinking and emotional awareness. Requires the offender acknowledges and discusses past sexual offences, expresses a desire to reduce their risk of reoffending, and agrees to participate in required assessment.
3. **Skills application**: assists the offender to integrate the learnings in Phase 2 into their daily lives. Focuses on relapse prevention, coping with cognitive distortions and developing victim awareness. Requires the offender accepts responsibility for past offences, articulates a commitment to ‘abstinence’, understands the trauma resulting from their sexual crimes, is able to correct deviant thoughts, demonstrates an ability to manage sexual urges and impulses, and shows an ability to cope with high risk factors.
4. **Discharge readiness**: develops a detailed Community Safety Plan and involves family members and significant others in the relapse prevention plan. Focuses on relapse prevention, managing cognitive distortions, victim empathy and coping strategies. Treatment teams must determine that offenders can fully describe the negative impact of their sexual offending on their victims, acknowledge and accept past sexual crimes, articulate a commitment to abstinence, correct all cognitive distortions, able to control deviant sexual urges and interests, can describe potential risk factors and internal warning signs, can cope with risky situations, follow rules and comply with supervision, and displays no inappropriate impulsivity or inappropriate emotions.

Since its inception, only a small number of offenders have successfully completed the Coalinga program and have been released to the community.

Currently in Australia, the continued detention of sexual offenders takes the form of a criminal justice model. This model is supported by research that shows that the majority of sex offenders, while having a history of mental health problems, are not clinically mentally ill. Smallbone and Wortley (2000), found that the majority of child sex offenders do not have a diagnosable mental disorder, although many have been treated for depression (23%), drug and alcohol misuse (18%) and anger management issues (13%).

However, for those offenders who 'do' have a diagnosable mental illness, Bravehearts believes that civil commitment to a mental health unit dedicated to the treatment of sexually violent offenders is an option that warrants further consideration.

It is our position that a specialised sex offender mental health unit, in line with the Coalinga model, should be established.

While currently the admission of offenders to a mental health facility can occur under correctional policies (where an offender satisfies the requirements for involuntary commitment the mental health legislation) Bravehearts puts forward the following proposal for responding to dangerous and/or repeat offenders:

- The criminal justice proceeds as normal.
- Once a repeat offender or an offender who is designated as a dangerous offender (due to the nature of the offences and/or offending behaviour) has been found guilty, a mental health assessment is ordered.
- As happens under the Coalinga model, the offender should be assessed by two independent psychologists or psychiatrists. If both assessments concur that the offender meets the criteria to be admitted to the sex offender mental health unit, the offender is sent to the unit on an indefinite basis for treatment. If one agrees and the other does not, an additional two psychologists or psychiatrists assess the offender. If those final two reach agreement, the offender is then sent to the specialised unit.
- Where there is no unanimous agreement or If the offender does not meet the criteria for admission to the mental health unit, they are sentenced by the court to a term of imprisonment and as is the current situation subject to risk assessment at the end of their sentence under the DPSOA legislation.

Treatment Programs

The overarching aim of intervention with offenders is to protect victims and potential victims; effective intervention must be focused on the offender taking full responsibility for the feelings, thoughts and behaviour that support his offending predicated on the premise that male sexual arousal is controllable. The goal of intervention is to ensure that sex offenders can control their behaviour so that they do not re-offend or sexually abuse others.

While there is much debate around the mandatory exposure to treatment programs for sex offenders (including the need for offenders to admit guilt and be voluntarily willing to attend rehabilitation programs), Bravehearts believes that all sex offenders must complete a treatment program.

Resourcing must also be targeted to ensuring that adequate and effective treatment programs are available post-release in the community to provide the best opportunity to assisting offenders in the ongoing management of their offending risk.

Community Notification Laws

Community notification laws are the least best option in terms of effectively protecting the community but are attractive to the community. They have the potential to provide some parts of the community with some feelings of comfort that governments and the authorities are giving them all the information that they need to keep themselves and their children safe and they satisfy the right of the public to know if an offender is living nearby. Community notification laws are a reaction to the failure of the current systems' ability and willingness to protect the community against known child sex offenders and prevent offenders from re-offending

While Bravehearts does not support widespread community notification of sex offenders (based on the experience of 'Megan's Law' in the United States), we do believe that current registration legislation should be expanded to allow for restricted notification. We advocate the duplication nationally of the Western Australian 2011 legalisation which provides for the public disclosure of limited information relating to released, adult, repeat child sex offenders, specifically the publication of name, up-to-date photograph, date of birth, and date of release. Unlike the WA Legislation however, Bravehearts does not advocate for the residential area to be defined by postcode but rather by the broader local government area and advocates that information should only be published with the consent of the victim.

In addition we support a trial of a public disclosure scheme based on the experience in the United Kingdom's *Child Sex Offender Review (CSOR) Public Disclosure Pilots*. This Scheme would provide members of the public with a formal mechanism for requesting information about individuals who have access to children and may have convictions for child sex offences.

After reviewing broad level community notification laws the UK Government resisted calls for a Megan's Law style legislation based on findings that these laws had not resulted in reduction of sexual offences in the United States and would fail to protect the community. Instead, in 2008 the UK government introduced a child sex offender disclosure scheme which enables members of the public to ask the police whether an individual (e.g. a neighbour or family friend) is a convicted sex offender.

The scheme is commonly referred to as "Sarah's law" after Sarah Payne, who was abducted and murdered by a man with a previous conviction for abducting and indecently assaulting another young girl.

The scheme was initially piloted in four police force areas (Cambridgeshire, Cleveland, Hampshire and Warwickshire) over a twelve month period from September 2008. During the course of the pilot a total of 585 enquiries were made. Of these, 315 were proceeded with as applications, resulting in 21 disclosures being made. A further 43 applications resulted in child safeguarding actions other than a disclosure (e.g. referral to social services). Research commissioned by the Home Office suggested that the police

and other criminal justice agencies had seen benefits in the formalisation of processes, the provision of increased intelligence and the provision of a better route in for the public to make enquiries should they have concerns (Kemshaw & Wood, 2010).

Statute of Limitations

Although outside of the scope of the current Inquiry, we would like to take the opportunity to present out concerns about current *statute of limitations* legislation, the profound and complex consequences of child sexual assault and our call for the restrictions on survivors of child sexual assault to civil recourse to be rescinded.

When the *statute of limitations* is considered in the context of child sexual assault, it is often argued that the traditional balance between the rights of the alleged offender and the survivor, and those of society, should be altered in favour of the survivor and more particularly that no limitation period should apply.

It is Bravehearts' stance that in cases involving the sexual assault of children, the application of any limitation provisions to deny adult survivors of abuse access to redress is theoretically, practically and morally unjustifiable. It is Bravehearts position that limitations to redress for survivors of child sexual assault should be abolished.

Survivors of child sexual assault face enormous barriers in disclosing. The impacts of child sexual assault typically mean that the victim does not disclose until they feel safe to do so, and this frequently does not occur until some time has passed.

In Queensland, the Project Axis survey found that of 212 adult survivors:

- 25 took 5-9 years to disclose it;
- 33 took 10-19 years; and
- 51 took over 20 years.

Where the perpetrator is a relative, research shows an even more prolonged process. A Criminal Justice Commission analysis of Queensland Police Service data found that of 3721 reported offences committed by relatives:

- 25.5% of survivors took 1-5 years to report the acts;
- 9.7% took 5-10 years;
- 18.2% took 10-20 years, and
- 14.2% took more than 20 years.

(Professor Ben Mathews, 2003)

Having been, in many cases, completely disempowered by an offender, the psychological consequences of child sexual assault have far reaching consequences: shame and guilt can often mean that survivors are unable to disclose until parents have passed away; many survivors are simply not ready to disclose as they may still be processing the psychological trauma and impacts of the sexual assault; and victims may experience post-traumatic stress disorder (essentially this means that a victim is aware of the harm they experienced but disassociate themselves from any reminders of the traumatic event, including litigation).

The relevance of these descriptions of the psychological effects is that even if a survivor is aware of the possibility of legal action they may decide that to take such action would

revive traumatic memories and may even be destructive and therefore delay proceeding with the matter.

Identifying that it can take many years for victims to be ready to recognise and confront what happened to them, many States in America are currently reviewing statute of limitations laws, with some states such as Arkansas (http://forward.com/articles/172412/new-york-may-ease-statute-of-limitations-for-decad/?p=all) and Minnesota (http://www.twincities.com/crime/ci_23200129/minnesota-senate-passes-bill-removing-civil-statute-limitation) eliminating statutes of limitations for victims of child sexual assault.

> *As Australian society witnesses an increasing number of revelations of child sexual abuse, and as more cases come before the courts, the question of legal redress for adult survivors of abuse becomes ever more pressing. Due to the psychological sequelae of abuse, adult survivors are often unable to institute proceedings within statutory time limits, and case law demonstrates significant difficulties in obtaining an extension of time in which to proceed. The statutory time limits and the courts' application of extension provisions often operate to deny legal remedies to these plaintiffs. (Associate Professor Ben Mathews, 2003)*

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