



Our **Mission** is to prevent child sexual assault in our society.
Our **Vision** is to make Australia the safest place in the world to raise a child.

7th January 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane, Qld 4000
Email: lacsc@parliament.qld.gov.au

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

To Whom It May Concern:

Bravehearts is pleased to provide this submission in relation to the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*.

As an agency that works with, and advocates for, survivors of child sexual harm, we welcome the Queensland Government's commitment to reviewing legislation in line with the extensive work and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). With our extensive experience working with survivors of child sexual assault and exploitation, and lobbying for reform, Bravehearts strongly advocates for legislative responses that ensure, as far as possible, justice for survivors.

Amendments in relation to the Royal Commission Criminal Justice Report recommendations:

- **Providing for retrospective application of the offence of maintaining a sexual relationship with a child under 16**

Bravehearts broadly supports providing for the retrospective application of the offence of 'maintaining a sexual relationship with a child under 16'.

We do however advocate that sentencing of offenders should be based on current penalties.

Charging and sentencing of historic offenders is often determined by the relevant legislative framework at the time of the offence and in line with sentencing at the time the offence occurred. This is due to the principle that an offender should not be given a harsher sentence than that which was available at the time of the offence. Unfortunately, this has led to a situation where if the maximum penalty has increased since the offence, the offender is not subject to those changes, however if the maximum penalty has decreased, because it does not adversely affect the offender, they may receive the benefit of that change.

Bravehearts' position is that the seriousness of child sexual offences warrants amending

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legislation to ensure the true retrospective application of current offences. It is our view that the marked inadequacy of historical standards and sentencing, and the acknowledgement and understanding of the traumatic impact of offences on victims, far outweigh issues raised in relation to the principle that offenders should be sentenced in line with what was prescribed at the time of the offence.

Additional Comment: We would also like to take this opportunity to raise our concern around the continued use of inappropriate language describing this offence type as a ‘sexual relationship’. The use of this sanitised terminology continues to misrepresent the offence and minimise its seriousness. We believe that describing these offences as a ‘sexual relationship’, is incredibly erroneous and can add to the trauma of the assault itself. For victims, to have such horrific offences described and recorded as a ‘sexual relationship’, may give the message that the criminal justice system does not deem what occurred to them as serious. Bravehearts advocates for a review of language used to ‘modernise’ terminology used to describe offence types. Acknowledging that the offence of ‘maintaining a sexual relationship with a child’, includes both penetrative and non-penetrative offences, we would suggest that this offence type could be better termed ‘persistent sexual abuse of a child’.

- **Extending the grooming offence to persons other than a child**

Bravehearts fully supports the extension of the application of the offence of grooming a child under 16 to recognised grooming behaviour directed at adults, with the intention to facilitate the sexual exploitation of a child.

It is widely recognised that grooming of children often does not occur in isolation from grooming of parents, carers and/or organisations. Many individuals who groom children for the purpose of a sexual offence, invest time in grooming parents, carers and/or organisations to facilitate sexual ‘access’ to the child. Grooming of children and young people, as well as family members/carers, is a routine part of the offending cycle. Bravehearts has long argued the need for a broad level grooming offence to be introduced to provide for the capacity to potentially intervene before a sexual assault/harm is committed. We also agree with the Royal Commission’s assertion that a broad grooming offence is likely to have educative, and hopefully consequently preventative, benefits for those in a position to identify such behaviour.

As the Royal Commission recognised in Recommendation 26 of its Criminal Justice Report, expanding the application of grooming offences to include persons other than the child is critical in recognising the extent of harm committed by grooming offences. Amending the Queensland Criminal Code will ensure that the impact of grooming on parents and carers is considered and acknowledged within the criminal justice system.

- **Provide for retrospective application of the removal of limitation periods and immunities on prosecutions for certain child sexual offences**

Bravehearts advocates for providing for the retrospective application of the removal of limitation periods for child sexual offences.

We note that limitation periods apply for some repealed and former Sections of the Act, and that this amendment will remove any doubt around immunity from prosecution based on limitation provisions in these Sections.

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- **Creation of new third-party offences of failure to report belief of child sexual offence committed in relation to a child and failure to protect child from child sexual offence**
Bravehearts fully supports the creation of new failure to report offences along with the complementary failure to protect offence.

As the Royal Commission has shown, the failure to report child sex offences and the failure to protect a child has devastating implications, both on the victim/s and on the potential of further offending by the alleged perpetrator.

Laws around failure to report offences can be contentious. Concerns are raised that if individuals feel they will be penalised for not reporting concerns that this may result in over-reporting and a waste of investigative resources. It may be argued that if a criminal offence for failing to report is introduced, then the concern around over-reporting will be intensified.

Bravehearts strongly believes that we all have a duty to protect children and young people, and as such should be required to report suspected or disclosed harm to the authorities who have the knowledge and skills to properly investigate. The underlying purpose is to ensure that those who are in positions that allow them to pick up red flags of behavioural indicators.

In response to the concerns around such laws, Bravehearts agrees with the need to establish an evidential threshold requiring a belief to be reasonably held, and the requirement for a disclosure to be made in good faith to counter concerns of malicious reporting.

We are pleased to see the application of the failure to report offence to *all adults*, and not just being limited to harm occurring in institutional contexts; and support the restriction of the failure to protect offence to institutions as it specifically addresses harm occurring in the institutional context (e.g. knowledge of an offender within the organisation).

We fully endorse ensuring that the failure to report offence applies to information gained during, or in connection with, a religious confession. The need for churches to reform is clear if there is to be a zero tolerance for child sexual assault and no sanctuary for child sex offenders.

The need for the States' Law to be amended to ensure reporting as recommended by the Royal Commission is critical, and Bravehearts fully supports the relevant recommendations made in the Criminal Justice Report and the Final Report.

Certainly, with the issue of child protection, secular law should override any Church law and there should be no exemptions. We believe that for most parents, if their child was being sexually assaulted and the offender confessed to a priest or a child disclosed within confession, they would want the authorities to know about it. This is particularly relevant, but not exclusively so, to on-going sexual assault and the prevention of future sexual harm.

Additional Comment: Bravehearts continues to advocate for the introduction of mandatory standard non-parole periods (SNPP) in relation to sexual offences against children. We note that, in respect to this specific amendment, maximum penalties have been included. However, we believe that the likelihood of the maximum being enforced as a penalty for failing to report will not be a deterrent for institutions such as the Catholic Church. The Catholic Church has made it clear, in other jurisdictions where similar reforms have been introduced, that they will not report information that has been gained through the religious confessional. We believe

that only surety of enforcement through a mandatory SNPP will increase the likelihood of compliance by the Church.

Additionally, Bravehearts supports 'blind reporting' as discussed by the Royal Commission, and currently has a national reporting option in place, the Sexual Assault Disclosure Scheme, linked in with each police jurisdiction.

The Sexual Assault Disclosure Scheme (SADS) was developed by Bravehearts as a means to reduce the barriers to disclosure and reporting among adult survivors of child sexual assault. In reducing the barriers to disclosure, SADS also aims to increase the number of offences being reported to the authorities, which might otherwise not have come to police attention. The Scheme acknowledges that many offenders have multiple victims and allows for the identification and linking of matters where this occurs.

SADS currently operates in all jurisdictions across Australia and provides adult survivors with a safe and non-confrontational means of officially reporting historic cases of child sexual assault, it can also be used by third parties. Through SADS, survivors are able to report their experiences anonymously to police, while receiving support from Bravehearts' specialised case management and counselling staff.

In relation to how a new failure to report offence may operate in Queensland, Bravehearts believes that it must relate to all offences relating to child sexual harm and that the offence should require either reporting to police, under the mandatory reporting scheme or any alternative reporting option (such as SADS) in the case of historical offences.

- **Ensuring that offenders who have used their good character to facilitate offending cannot rely on previous good character as a mitigating factor on sentence where this has facilitated the offending**

Bravehearts fully supports excluding 'good character' as a mitigating factor at sentence.

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, whether or not it can be shown that the offenders 'use' of their good character was used in facilitating the offence.

Child sexual offenders, in particular, often 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 often the very mask behind which their crimes are committed.

As noted above, *the 'good character' of an offender is presented to minimise the impact of the offence.* We know that often offenders present as of 'good character' as a means of both grooming victims and those around victims and of being able to continue offending without suspicion.

- **Ensuring that offenders convicted of historical abuse are sentenced in keeping with contemporary sentencing standards**

Bravehearts advocates ensuring offenders for historical child sexual offences are sentenced in accordance with sentencing standards at the time of sentence, rather than the offence.

As noted above (under '*Providing for retrospective application of the offence of maintaining a sexual relationship with a child under 16*'), traditionally, the position has been that when an offender is sentenced it should be in accordance to the law at the time the offence was committed, not the law at the time of sentencing. However, specifically in relation to child sexual offences, we strongly support the need to recognise increased understandings of the serious nature of these offences, the impacts on victims and the expectations of the community.

Sentencing for sexual offences against children and young people must take into consideration what we know about the seriousness of these crimes and their often life-long impact on victims, as well as what is reasonable and just. Again, as noted above, Bravehearts' position is that the seriousness of child sexual offences warrants amending legislation to ensure the retrospective application of current offences. It is our view that the marked inadequacy of historical standards and sentencing, and the acknowledgement and understanding of the traumatic impact of offences on victims, far outweigh issues raised in relation to the principle that offenders should be sentenced in line with what was prescribed at the time of the offence.

- **Reform jury directions on delay and forensic disadvantage**

Bravehearts supports the proposed amendments to the *Evidence Act* and the *Criminal Code* in response to the Royal Commission recommendations around judicial direction and warnings in relation to delay and significant forensic disadvantage, specifically as this may relate to victims.

We do however reiterate the Royal Commission's acknowledgement that delay on its own should not be used to establish significant forensic disadvantage.

Significant delays in disclosing the childhood sexual assault is not an anomaly but reflects key characteristics of the offending itself, namely: silence, secrecy, and, shame.

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.

Having been, in many cases, completely disempowered by an offender, the psychological consequences of child sexual assault have far reaching consequences: shame, self-blame and guilt can stop children from disclosing, can often mean that survivors are unable to disclose until parents have passed away; the result of grooming and the power imbalance between the child and the offender often impacts on a child's ability to speak out; 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 disclosure).

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We would argue that in the context of child sexual assault the traditional balance between the rights of the alleged offender and the survivor should be altered in favour of the survivor

In relation to the current Bill, Bravehearts is also pleased to see the removal of ‘emotive language’ in directing the jury (such as ‘dangerous or unsafe to convict’ and ‘scrutinise with great care’). Language can often, intentionally or unintentionally, influence decision making through imparting preconceived opinions.

- **Creation of an intermediary scheme**

Bravehearts is pleased to support the creation of an intermediary scheme. We recognise the specialist skills needed to support victims of child sexual assault and exploitation, and the vulnerabilities victims may experience throughout the criminal justice process – from police investigation to after conviction and sentencing.

We also recognise that such a scheme should extend to adult survivors; noting that our case management teams have often supported adult survivors at various stages (to assist with understanding what can often be a confusing and confronting process or clarify information provided; during interviews with police, during and after meetings with prosecutors, at court, and post court).

We note in the reading of the Bill, the government has committed to funding victim liaison officers for the Office of the Director of Public Prosecutions, as well as training for police officers on communicating with people who have experienced trauma. We fully support this and note that training should not just be a one off, but involve ongoing professional development – both for the police, and also the victim liaison officers. Bravehearts has extensive experience in training and in trauma-informed approaches, and it is important to ensure that training is conducted by an experienced and specialised organisation.

Additional Comment: Bravehearts notes that as an organisation, we provide adult survivors with information about the criminal justice system through our Information and Support Line and case managers, and through our *Loud and Clear* booklet.

Amendments in relation to the Queensland Sentencing Advisory Council CEM Report:

- **Ensuring consistent use of language across the PSA and CEM related offences of the Criminal Code and other Queensland statutes**

Bravehearts supports the clarification of definitions in Section 9(7), addressing the inconsistency by requiring a court to “consider the nature of (i) any material describing or depicting a child; or (ii) any doll, robot or other object representing or portraying a child”, and also supports the inclusion of sentencing guidelines specific for child sexual exploitation material and sentencing for the use of child abuse objects for sexual gratification.

- **Additional sentencing guidelines requiring judicial consideration of an offender’s conduct or behaviour in relation to CEM and child abuse objects when sentencing an offender for CEM offences**

Bravehearts is pleased to note the matters to be considered by the court when sentencing in relation to CEM offences.

We note that these reflect the multitude of factors that may be associated with offence seriousness and/or risk levels for CEM offenders.

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There are considerable difficulties in understanding the relationship between the content of the images viewed and the seriousness of the offence and risk of the offender. In part this is because there is the research that has focused on the content of the images collected by offenders is still a growing body of work, including around whether the images themselves are a reliable indicator of future risk, or if other factors come into play. Research suggests that in the assessment of the severity of offending behaviours and future risk, it is insufficient to look only at the types of images and volume possessed. Other vital factors such as the engagement with the material, the organisation of the collection, how long the material has been kept, and the way images have been sourced, as well as behavioural factors such as online and offline activity.

We also believe that sentencing of CEM offence needs to recognise that these offences, often perceived as 'victimless', indeed have a profound and long-term impact on the victims of CEM. In relation to the victims of these offences the memorialisation of the sexual assault/s perpetrated against a victim, that the online nature involving multiple abusers (those that access and view the images), and the continued fear of discovery by others, may heighten the impact of the offending for the victim.

- **Additional sentencing guidelines requiring judicial consideration of any relationship between an offender and a victim child when sentencing an offender for CEM offences and sexual offences committed against a child**
Bravehearts supports requiring judicial consideration of the relationship between an offender and a victim when sentencing, as reflected in amended sections 9(6) and 9(7) of the *Penalties and Sentencing Act*.
- **Establishing a statutory power for a court to order that a report tendered at sentence be provided to Queensland Corrective Services or Department of Youth Justice**
We fully support this amendment of the *Penalties and Sentencing Act*, providing the court with the authority to order that reports tendered at sentencing be provided to Corrective Service or Youth Justice.

Child abuse object offences:

Bravehearts fully supports the creation of new offences relating to the possession, production and supply of child abuse objects. We are also pleased to see the broad the definition including dolls, robots or other objects used as child replicas for sexual gratification.

Child-like sex dolls have been an increasing concern for a number of years. While we are aware that the Australian Federal Police have proactively prevented the entry of these dolls into Australia, providing legislative backing through creating offences related to child abuse objects is essential.

As recently acknowledged in a paper through the Australian Institute of Criminology (Brown and Shelling, Exploring the implications of child sex dolls, March 2019), the argument often put forward by manufacturers and exporters of these dolls, that they have a therapeutic benefit in the prevention of abuse of children through the provision of a 'non-harmful means', has no support in research. While the evidence is still building, negative impacts of these dolls have been reported in the literature, including that they may desensitise users and normalise the sexual objectification of children. In addition, the potential use of these dolls to groom children for sexual assault and exploitation has been raised.

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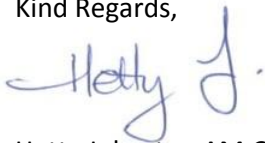
Other amendments:

We support the other amendments made within this Bill, including both to the *Criminal Code* providing for the limited right of interlocutory appeal, and to the *Police Powers and Responsibilities Act* providing police with the power to seize the working with children card from any person charged with a serious offence under the *Working with Children (Risk Management and Screening) Act*.

Once again, we would like to commend the Queensland government for proactively responding to the recommendations handed down by the Royal Commission, and for engaging consultatively with stakeholders throughout the process.

We thank you for the opportunity to provide this submission. Please contact us on research@bravehearts.org.au if any further information is required.

Kind Regards,



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