

# POSITION PAPER

## Silence, Shame, Secrecy and Child Sexual Assault



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## About the Authors

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Carol is a member of the Australian and New Zealand Society of Criminology, the International Society for the Prevention of Child Abuse and Neglect, and the Child Protection Practitioners Association of Queensland. She sits on the Federal e-Safety Commissioner's Online Safety Consultative Working Group, the Queensland Victim Services Interagency Organisation Network, the Queensland Child Protection Advocates Group and Twitter's Trust and Safety Council.

In January 2017, Carol accepted a three year position as a Visiting Fellow in the School of Justice, Faculty of Law, at Queensland University of Technology.

**Hetty Johnston AM, GAICD** is Founder and Executive Chair of Bravehearts Foundation Ltd, established in 1997, Australia's leading child protection advocate. A born lobbyist, Hetty is a woman of passion and determination who has succeeded in highlighting the crime of paedophilia and child sexual assault to media, families, schools and the general community both nationally and internationally.

Hetty's most recent accolades include: 2016 inducted into Australian Businesswomen's '*Hall of Fame*'; 2015 Queensland Australian of the Year; and 2014 Awarded Member of the Order of Australia (AM).

Hetty has been recognised for her outstanding contributions to child protection with numerous awards and nominations over her career since 1996. In 2013 Hetty was awarded Ernst & Young Northern Australia's *Social Entrepreneur of the year*, Westpac's 2013 '*100 Women of Influence*' and YWCA Queensland's '*125 Leading Women*'. 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 worldwide, receiving the prestigious annual *Toastmasters International Communication and Leadership Award*. Hetty is the recipient of two *Australian Lawyers Alliance Civil Justice Awards* (2003, 2004).

Hetty works with government and non-government agencies on legislative reform, submissions, lobbying and research to improve child protection and political accountability in Australia.

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# About Bravehearts

Bravehearts has been actively contributing to the provision of child sexual assault services throughout Australia 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.

## Our Mission

To prevent child sexual assault in our society.

## Our Vision

To make Australia the safest place in the world to raise a child.

## Our Guiding Principles

To, at all times, tenaciously pursue our Mission without fear, favour or compromise and to continually ensure that the best interests, human rights and protection of the child are placed before all other considerations.

## Our Guiding Values

To at all times, do all things to serve our Mission with uncompromising integrity, respect, energy and empathy ensuring fairness, justice, and hope for all children and those who protect them.

## The 3 Piers to Prevention

The work of Bravehearts is based on *3 Piers to Prevention: Educate, Empower, Protect* - Solid Foundations to Make Australia the safest place in the world to raise a child. The 3 Piers are:

**Educate**      Education for children and young people

**Empower**    Specialist counselling and support

Training for adults, professionals, business and community

Risk Management 'ChildPlace Health & Safety' Services

Community engagement and awareness

**Protect**      Lobbying & Legislative Reform

Research

# Abstract

Why is publication of identifying information absolutely prohibited in offences of a sexual nature and not in other cases? Where are the rights of the family and the child (until 18 years old) to be seen and heard if they so desire? Why are the rights of the victim and family treated differently in cases of sexual attacks to attacks of a different nature? Is there something the victim and their family should be ashamed of such that their identities should be compulsorily hidden?

Bravehearts' belief is that this should remain the choice of the child and the family - not dictated to by a government espousing traditional perspectives and underpinning the age-old demon - the silence and secrecy factor. This 'silence and secrecy' perpetuates the shame factor on the victim and relegates them to a life of isolation and victimisation.

This paper presents Bravehearts' position on the issue of confidentiality and privacy and child sexual assault.



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# Privacy, silence, protection and reform

Child sexual assault strongly relies on silence; in order to keep offending perpetrators need secrecy.

Offenders usually put a great deal of effort into ensuring that a child remains silent. Apart from promises, threats and bribes, offenders also take advantage of the child's powerlessness by presenting a distorted or false view of what is happening. Some of the ways offenders 'trick' children into secrecy include convincing the child that:

- They are somehow responsible.
- Others will blame them.
- They will be punished.
- They will be to blame if the offender goes to jail.
- They will be to blame if the family breaks up.
- They will be to blame if others in the family are upset.
- They are bad in some way and this is why the assault happened in the first place.
- They will not be 'special' anymore.
- No one would believe them if they told.

Following on from this, some of the reasons children don't tell are:

- They often feel it is their fault because they let it happen.
- They feel guilty about their body's natural reaction to sexual activity (even though this is beyond their control).
- They feel disclosure may cause family problems or breakdowns.
- The offender may be someone the child/young person heavily relies on.
- They fear they will be blamed, punished or not believed.
- They fear they will be separated from their homes and their families if they speak out.
- They fear disclosure will cause harm to someone or something they love and care for, such as family members or pets.

## Challenging systemic secrecy and silence

The generally consistent stated aim of Privacy and Child Protection legislation around the nation is to protect children from harm and/or exploitation. However, the prevailing view is that blanket privacy and confidentiality provisions only serve to protect the Government departments and cover-up system abuses and failures. Bravehearts support the need for these legislations but argue that in their current form, they act as a muzzle to the freedom of speech for children and their parents who legitimately want to 'break the silence' on the harm they have experienced. We argue for a process of application to void these restrictions such that those who want to speak publicly are able to do so.

If we are to successfully confront the issue of child sexual assault, challenging the culturally and historically entrenched response of secrecy and silence to child sexual assault is imperative. Bravehearts believe the way forward is to:



- Provide support and advocacy to victims, survivors and their families
- Give a voice to victims, survivors and their families
- Increase community awareness and understanding of the issue through community campaigns such as ‘White Balloon Day’
- Engage in robust public debate around legislative reform
- Conduct research specific to child sexual assault
- Increase transparency in decision making and external oversight within Government departments and the judiciary
- Invest heavily in Prevention and Early intervention programs with particular focus on personal safety education for children
- Work with Indigenous Australians to implement culturally and community acceptable awareness and education programs into their communities
- Invest in general child sexual assault awareness and training programs for people working with children
- Invest in child sexual assault specific training programs for professional therapists registered by Medicare, and those working with service provision organisations, to provide assistance to survivors of child sexual assault.

## A child’s right to privacy OR silencing the victims?

In 1999 Bravehearts produced a paper, ‘The right to speak and be heard’. The thrust of the paper and the critical nature of its message is the same today as it was then. It was through lobbying that this policy position was adopted into law through Section 189 of the Queensland *Child Protection Act 1999*. The paper reads:

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### The Right to Speak and be Heard

Why is publication absolutely prohibited in offences of a sexual nature and not in other cases? Where are the rights of the family and the child (until 18 years old) to be seen and heard if they so desire? Why are the rights of the victim and family treated differently in cases of sexual attacks to attacks of a different nature? Is there something the victim and their family should be ashamed of such that their identities should be compulsorily hidden?

Bravehearts belief is that this should remain the choice of the child and the family - not dictated to by a government espousing traditional perspectives and underpinning the age-old demon: the silence and secrecy factor. This ‘silence and secrecy’ perpetuates the shame factor on the victim and relegates them to a life of isolation and victimisation.

Legislation should provide ‘an out’ for families and children who want it (as in the Bettina Hall case – Courier Mail 27/08/98). While we agree the protection should be in place, Bravehearts also maintains the victim’s rights to be seen and heard, just as they would if they were the victim of any other type of crime. We believe that under certain circumstances, with professional advice, counselling and assessment combined with parental approval, the decision must remain with the child and their non-offending family.



It is not expected that many will call on this option, but it is Bravehearts' position that it should be there for those who want it and even for those who don't, it would provide an important matter of choice and validation. Child Protection legislation should not support the secrecy/silence/ shame factor any more than it must.

The general public can see and identify sick children in hospital and feel compassion, show support and help. They can see and identify an innocent little boy who is set on fire in a schoolyard and feel compassion, show support and help. The list goes on. But they can't see the faces of the innocent children who have been sexually assaulted. Why not? What makes them any less innocent, any less needy or any less tragic? What are we protecting them from?

The adage that child sexual assault is a 'taboo subject' is beautifully validated by government legislation. As a direct result, society doesn't learn to feel the same compassion, show the same support or offer the same help to these equally innocent, vulnerable, destroyed children.

Instead, the generational approach of silence and secrecy is adopted and continues to be espoused by legislation. This same tendency to silence and secrecy aids and abets paedophilia and entrenches notions of shame on the victims.

An undeniable damaging and historic perpetrator against children is public ignorance and government legislation. Societal attitudes inadvertently contribute to the proliferation of the sexual assault of children. The general public's desire to not discuss or deal with the problem in itself creates, sustains and promotes the environment which must exist for the child sex offender to operate.

Child protection legislation reinforces that societal attitude and does nothing to 'break the silence'. Governments must play a role in breaking down this ancient taboo not underpinning it.

Bravehearts believes that we should give children a choice and a voice, and not decree that they must protect themselves with silence and secrecy.

The NSW Royal Commission 'The Paedophile Inquiry' (Wood, 1997) made some interesting observations. It states:

*The problems of 'systems abuse' are well recognised and have been referred to throughout this Report. It has been defined as 'harm done to children in the context of policies or programs that are designed to provide care and protection', including harm to children's welfare, development or security. The removal of power and control caused by sexual assault can be aggravated and entrenched if agencies fail to understand the victims or to recognise their needs and wishes...*

*Deficiencies previously documented as contributing to systems abuse, and confirmed by evidence to this Commission, include:*

- *failure to maintain a child focus and ensure that the child is heard, empowered and retains dignity throughout the process;*
- *lack of a voice for children...*

*The justice system has a particular part to play. Child abuse may lead to all manner of formal proceedings each possibly resulting in considerable trauma for the child concerned. Causes of that trauma include:*

- *the failure to take the needs and concerns of the child into account, leading to feelings of helplessness and worthlessness;...*

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Sadly, as noted in a speech by Hetty Johnston delivered at Parliament House Canberra in September 2009, the situation some ten years later is much the same: “*Still, alarmingly, victims of child sexual assault will remain invisible and mostly silent because ironically the offenders, society and the law unwittingly collaborate to ensure they remain so.*”

## Current Child Protection Act in Queensland – Section 189

Publication of information that identifies or may lead to the identification of a child victim has been widely restricted by legislation. Bravehearts recognises that the prohibition of publication of this in relation to current proceedings (be that in relation to statutory concerns or to criminal matters) is necessary to protect the child and the legal process during the court proceedings and supports this protection being in place. However, once a matter has reached its conclusion, Bravehearts believes that provision must be made to provide children and their families with the opportunity to speak publicly if so desired.

In 2000, Bravehearts successfully lobbied to amend the Queensland *Child Protection Act 1999* to allow for individuals to apply for permission to speak publicly about issues that may affect themselves or their family.

Under the Act, Section 189 allows for the approval to be sought from the chief executive (who will assess the motivational integrity of the request among other considerations) where a child is or has been the subject of an investigation under the Act, who is under the statutory care of the Department or who is the subject of an order. Additionally, the provision also applies to children who have been harmed or at risk of harm, or allegedly so, by a family member:

### **S189 Prohibition of publication of information leading to identity of children - QLD**

- (1) A person must not, without the chief executive’s written approval, publish information that identifies, or is likely to lead to the identification of, a child as—
- (a) a child who is or has been the subject of an investigation under this Act of an allegation of harm or risk of harm; or
  - (b) a child in the chief executive’s custody or guardianship under this Act; or
  - (c) a child for whom an order is in force.

- (2) A person must not, without the chief executive’s written approval, publish information that identifies, or is likely to lead to the identification of, a child living in Queensland as a child who—
- (a) has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child’s family; or
  - (b) is, or allegedly is, at risk of harm being caused by a parent or step-parent of the child or another member of the child’s family.

Section 189 has been applied in Queensland providing victims with an opportunity to have their voices heard. In August 2001 mother of four young children and Indigenous foster carer Ms Rachael Bon used the provisions of Section 189 to allow the front page coverage in Brisbane’s Courier Mail newspaper of her family’s story.

## The criminal law and privacy, protection, silence and reform

It is fair to say that most victims of crime do not want to be publicly identified but again, for those that do, there must be an ability to do so. Currently, courts impose a blanket prohibition on the identification of child victims of crime. Bravehearts support this approach during the trial period and for so long as the victims of crime desire this legislative protection. However, if, at any point in time after the trial, the family chose to speak publicly the only avenue to overturn the blanket prohibition currently is to reconvene the court, reintroduce all the evidence and seek permission from the judge.

Not only is this a costly and time consuming exercise for the Court system, it is extraordinarily cumbersome and complex process for the victims of crime. The current process, in itself, is not conducive to affording basic human rights to people who chose to speak publicly. In fact, it is fair to say that the current system actually discourages this option by making the ability to make this choice and achieve this outcome inaccessible and therefore, almost impossible.

## The Media

Balancing the protection of children from harm and exploitation, their rights to privacy and their rights to have a voice is difficult at the best of times; when that child is also the subject of a crime the question of providing a public voice is even more complex.

Broad standards outlined in the Australian Press Council’s ‘Statement of Principles’ (2009) provide that “the freedom of the press to publish is the freedom of the people to be informed”. The fourth general principle is pivotal to the discussion in this paper:

*News and comment should be presented honestly and fairly, and with respect for the privacy and sensibilities of individuals. However, the right to privacy is not to be interpreted as preventing publication of matters of public record or obvious or significant public interest...*

Historically, it is clear that many child protection system failures and general child abuse scandals would not have come to light and subsequently been addressed, if it were not for individuals coming forward and the media role in bringing these issues to the public arena.

Bravehearts' role in bringing the systemic issues in the former Queensland Department of Families to the media played a pivotal part in forcing Government to address serious concerns that risk and harm to children were being ignored by the Statutory body. It was Bravehearts aside the victims (who approached the organisation) engaging with the media to publicise the ongoing failures of the Department that instigated the Inquiry resulting in the complete dismantling and restructuring of the Queensland child protection body.

The legislative barriers make it impossible for children who have been harmed and/or require protection from harm to speak for themselves, however it is important that their stories and their voices are heard.

While it has been argued that using the power of the media to expose harm perpetrated against children may not always necessitate revealing the child victim's identity (e.g. Supreme Court of Victoria, December 1995 and January 1996: *Hinch v. Director of Public Prosecutions*; and *Television and Telecasters (Melbourne) Pty Ltd v. Director of Public Prosecutions*), Bravehearts believes that the choice to speak out should remain with the child and the family. Using the power of the media to expose harm perpetrated against children is a crucial and important option. The silence and secrecy that has for so long shrouded public awareness and understanding of child sexual assault must be eradicated. Victims deserve the right to speak out; whether it be to present their stories, to push for changes, or to protect themselves.

What we do know is almost every State in the nation has undergone extensive Inquiries due to revelations of gross harm being perpetrated on children amid massive systems abuse and/or cover-up and/or incompetence. We also know that sadly, this harm is not generally exposed until the numbers of child victims and the length time over which the harm occurred reaches horrendous levels. We know public disclosure works to inform the community and to move governments to action. And we know that early intervention and exposure will serve to prevent this harm from both escalating and continuing.

We believe that society has both evolved to a point that we can at last engage in open discussion on this issue and that it is mature enough to deal with public disclosures of child sexual assault. The time for muzzling and muffling of community debate around child sexual assault has passed. It is through public discussion and debate that we will empower children and adults to stop child sexual assault and instil the clear understanding that the victim has nothing to hide and nothing to be ashamed of.

When society plays a role in concealing by silence, the prevalence of child sexual assault and child abuse generally, it pays a price. Offenders have happily operated in a climate that we have helped create and sustain. It is in this climate of ignorance and legislative muzzle that they continuously offend, safe in the knowledge that it is unlikely their abuse will ever be reported, publicly disclosed or let alone believed.

# Bravehearts' Position

Bravehearts recognises that it is important to achieve a balance between protecting children and their families from any potential harm that may result from involvement with the media, and the need to ensure they have access to the media so their stories are told from their perspective, using their voices.

Why is the participation of children and young people important?

- People, young and old, want to have their say
- It is empowering to give people who have been harmed a voice
- If the victims and their families are not interviewed, part of their story could be lost or distorted
- Although it is often assumed that victims of crime and their families cannot grasp complex issues, experience shows how young people and their families can provide invaluable personal insights that have improved our knowledge, awareness and ability to protect children
- Limiting people's access to the media limits their ability to lobby those in power. Media coverage can bring public attention to various issues, which can lead to action, policy change and wider protection for children.

But while it is important to talk to victims of crime of all ages about their experiences, they need to be protected from inappropriate media attention for a number of reasons. These include:

- The imbalance of power between the victims of crime and the journalist, which could lead to exploitation
- Victims of crime, and in particular children, may lack the knowledge or experience to decide how and when to limit their involvement with the media
- Victims of crime and in particular children, may be excited by media coverage, and may not consider the long-term implications of the coverage.

While Bravehearts support and acknowledge legislation to protect the child and the child's family against potential exploitation, re-victimisation, and/or physical or emotional harassment, we also support the rights of victims, survivors and their families to speak publicly if they so desire.

It is Bravehearts' position that the entrenched and blanket legislative silencing of victims that prohibits outright any public discussion or disclosure are based on many dubious assumptions including:

- That public identification is harmful.
- That it is reasonable to expect that the child (the victim in the first degree) or the child's family (victims in the second degree) will incur some form of community retribution or re-victimisation if others are to become aware of the fact that they were the innocent victim of a crime perpetrated upon them;
- That the child is protected from this assumed backlash or re-victimisation by virtue of maintaining their silence and secrecy;

- That the ‘Chief Executive Officer’, being a reflection of the Government of the day, is in a better position to judge the potential or perceived potential risk to the family of this issue than is the child and family to whom it personally relates;
- That all children under the age of 18 and their non-abusive families are incapable of forming their own views and position on this issue and as such, their right to free speech and choice must be limited; and
- That silence, secrecy and anonymity in the area of child sexual assault is the best protection mechanism to protect children against further sexual assault.

Legislation that does not allow for the victim of child sexual assault to speak out and be heard freely, fails to recognise that:

- ‘Silence and secrecy’ plays a major role in the proliferation of child abuse;
- The ‘silence and secrecy’ response perpetuates the ‘shame’ factor on the victim, does nothing to help in their healing but instead, relegates them to a life of isolation and further victimisation;
- The ‘silence and secrecy’ factors are unquestionably related to a perceived sense of shame or guilt on behalf of the victim and that this factor is best overcome - not by enforcing the continuance of silence, but by finally providing victims the required resources and counselling needed to overcome these misplaced feelings, to re-empower these children, to help redefine and set their boundaries and re-instil self-esteem;
- This legislation will validate and entrench the community ‘shame’ factor for many victims and their families and will do nothing to instil the necessary ‘pride’ factor that speaking out to protect, warn and educate others delivers;
- There is no, to our knowledge, substantiated evidence that the public is largely predisposed to victimisation or harassment of persons in such matters;
- The lack of community education, awareness and comprehension of the issues surrounding child sexual assault is the foundation on which any potential harassment and victimisation is built and that the best way to deal with these issues is to increase and entrench public awareness and understanding; and
- Strengthening anti-discrimination laws, bullying, exploitation and harassment provisions in legislation relating to victims and enforcing imprisonment penalties against those who would discriminate, exploit or abuse the child rights rather than those who dare to speak out is the best way to defend and protect the rights of the child.

Bravehearts acknowledge that the larger percentage of victims and their families will not wish to be identified but for those who do, and for even for those whom don’t, the vital matter of choice is imperative. Families and children whose motivational integrity is community benefit and who choose to speak out need a readily available ‘out’ from any legislative muzzle. This will benefit the community and the efforts to protect children generally because public disclosures that serve genuine public interest and public benefit will provide transparency, accountability and greater community awareness.

Bravehearts believe that the arguments for and against the compulsory prohibition of identification of child victims of sex crimes are based predominately on individual and collective philosophical stances and personal culturally entrenched bias rather than definitive research.

