Bravehearts
Educate Empower Protect Our Kids

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.

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National Security and Law Enforcement Policy Division
Department of Home Affairs
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Submission: Consultation Paper:
National Public Register of Child Sex Offenders

To whom it may concern,

We thank you for the opportunity to provide our views in relation to the current Consultation Paper on a National Public Register of Child Sex Offenders.

As an agency that is focussed on the prevention of sexual harm against children, and the protection of all children in our communities, Bravehearts' focus is on ensuring, first and foremost, that systems and legislation are established to increase the safety of children and young people (at all levels, primary, secondary, and tertiary level prevention and intervention). Too little funding and resourcing is provided into evidence-based responses to child sex offending.

In relation to the current Consultation Paper we note the alarming prevalence of child sexual assault and exploitation, along with the risks of online child exploitation. Statistics vary depending on the source of the figures, but most agree that approximately one in five children will experience some form of sexual harm before their 18th birthday.

> *"There were about 5.7 million children in Australia in 2016. It's difficult to know for sure how many children are sexually abused, but best estimates put it at roughly 8 per cent of boys and 20 per cent of girls. Put all those numbers together, and you could fill the MCG eight times over with children living in Australia right now who have been or will be sexually abused* (Gilmore, 2017).

There is no question that there needs to be a commitment to child protection across our country.

We note that the issue of a publicly available, national register of child sex offenders has been part of public discussion for some time, with a number of very strong voices advocating for the introduction of legislation on the Megan's Law model in the United States.

Based on evidence from evaluations and research on community registration approaches, Bravehearts has opposed the introduction of such an approach. In 2017 we updated our 2010 position paper exploring the evidence around the effectiveness of community notification laws (parts of this paper and the research are included throughout this submission).

It is our position that while community notifications laws are an attractive approach to the community, and we understand the frustrations and fears felt by communities when our courts release sex offenders, the evidence is that these laws are the least best option in terms of effectively protecting our children.

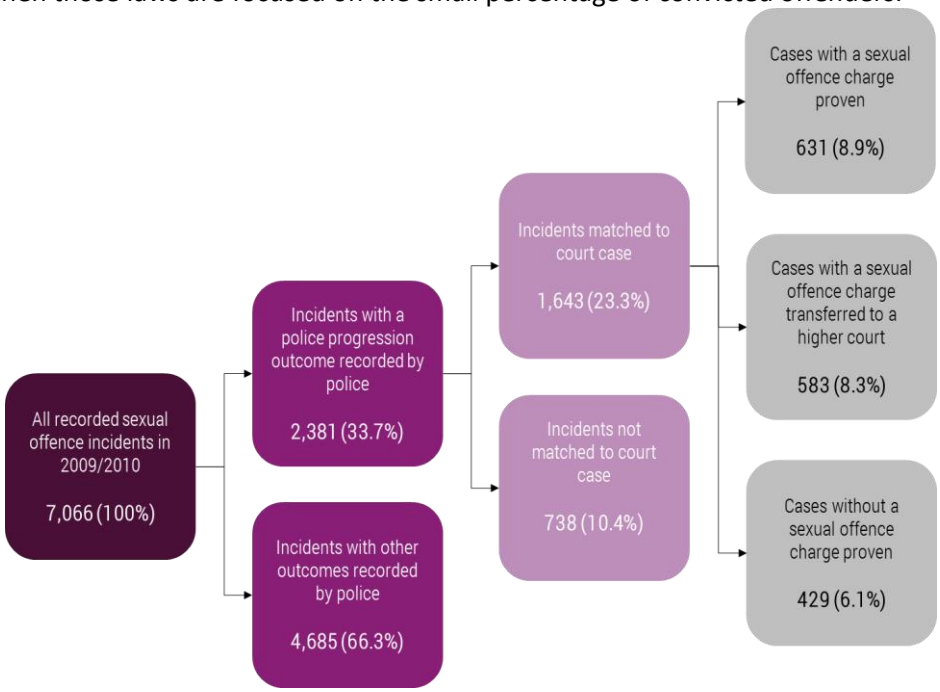
Bravehearts agrees with public comment by some advocates that the identity of dangerous, repeat sex offenders should not be suppressed. However, our issue is with the unintentional consequences of public registers that are focused on identifying the location of where individual offenders live.

While a *National Public Register of Child Sex Offenders*, may have the potential to provide some parts of the community with a false feeling of comfort that governments and the authorities are giving them all the information they need to keep their children safe, the truth is it won't. The community is rightfully fearful of the failure of the current system and its ability and willingness to protect the community against known child sex offenders and prevent offenders from reoffending.

Importantly, a national public register will only ever tell us about a small number of offenders. To begin with, official disclosure rates are low. Many victims do not disclose to the authorities. Research consistently tells us that only a small percentage of survivors will disclose, typically around 10%. A review of 13 studies with adult survivors of child sexual abuse showed that just 5 - 13% of cases were reported to police (London et al., 2008).

The subsequent attrition rate as reported matters proceed through the system reduces that number further. The Bureau of Crime Statistics and Research (NSW) found that criminal proceedings were initiated in only 15% of incidents of sexual assault reported to police involving child victims, and 19% of incidents involving adult victims (Fitzgerald, 2006, cited in Millsteed & McDonald, 2017).

More recently, a 2017 paper explored the rate of attrition of sexual offence cases across the criminal justice system in Victoria. This research demonstrates the limited impact of laws aiming to protect children, when those laws are focused on the small percentage of convicted offenders.



(Millsteed & McDonald, 2017)

Added to this the national register is focussed on those offenders convicted of serious, multiple or repeat child sex offences, resulting in a further reduction in the number of sex offenders that would be subjected to this legislation. Further, to protect the identity of victims, familial offenders are typically omitted from such registers. Ultimately, only a tiny number of child sex offenders will be subjected to notification.

This has been the experience with the Western Australian register:

> Whitting, Day & Powell's 2016(b) evaluation of the Western Australian Scheme emphasises how few offenders will be subjected to registration. Out of a total of 2,052 sex offenders, there were 125 subjected to notification (Tier 1: 39; Tier 2: 86), and there were 1,927 offenders who were not subjected to notification. **Only 6% of <u>convicted</u> sex offenders were able to be included in the Scheme**.

We argue, that there needs to be a holistic approach that encompasses:

- The strengthening of **continued detention legislation** that exists in various forms across the country (e.g. the *Dangerous Prisoners (Sex Offenders) Act 2004* [Qld]) would provide the capacity to ensure that offenders who are assessed as an unacceptable risk of reoffending remain incarcerated until such time as the risk is considered able to be managed.
- Bravehearts has advocated for a **specific, targeted, multiple strike legislative response** to repeat, serious sex offenders. 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, and that multiple strike legislation is an appropriate response.
- **Strengthening of existing inter-jurisdictional and 'multi-agency' relationships** for the monitoring of sex offenders post release. Providing police and community corrections with greater resources and avenues for sharing information is critical to ensure the effective monitoring and currency of offenders' information. As a component of monitoring, Bravehearts supports enhanced and strengthened approaches to supervising offenders in the community to assist offenders in managing their risk levels. It is our position that we need to utilise a battery of tools in order to decrease the likelihood of a child sex offender re-offending. This includes not only psychological testing and drug and alcohol testing, but also psychophysiological tests, specifically polygraphs and emerging integrity testing technologies such as VAST (Validated Automated Screening Technology) (http://vastscreening.com/).
- **Increased public awareness** of safety and protective skills, specifically programs that build resiliency and empower children with the knowledge to keep safe. Evidence-based, developmentally-appropriate personal safety programs, such as Bravehearts' Ditto's Keep Safe Adventure, are proven to play a key role in providing children and young people with knowledge and skills that reduce vulnerability to offenders. Broader campaigns and programs aimed at adults (focussed on the myths and facts of child sexual assault, including who offenders are, dispelling the prevalent 'stranger danger' myth, and providing knowledge around the dynamics of offending), provide information that supports them in protecting children.
- There is a need for **improved access to rehabilitation programs**, both within and outside of custodial settings. Kim and colleagues (2016) reviewed a number evaluations of sex offender treatments (including psychological treatment, institutional treatment and medical intervention approaches) designed to reduce recidivism, and found that each of the 11 that included evaluations reported significant recidivism reduction outcomes (with the most

recent 5 meta-analyses showing an overall 22% reduction in recidivism). We note however, that recidivism can only be measured in terms of known offences. For example, recidivism may be counted as a result of a new arrest or it may be counted as the result of a new conviction. Reliance on measures of recidivism as reflected through official criminal justice system data obviously omit offences that are not cleared through an arrest or those that are never reported to the police. This distinction is critical when considering recidivism rates and the impact of programs on reoffending.

- A focus on providing **support to address factors associated with risk of reoffending** warrants greater attention. The period immediately following the release of child sex offenders from prison into the community carries the highest risk of reoffending. However, research shows that sex offenders who receive support during this time are less likely to reoffend. Bravehearts supports the Circles of Support and Accountability (COSA) model, currently running in South Australia. The emerging international evidence suggests that COSA can reduce sexual, violent and general reoffending, protect the community from sexual recidivism, and more effectively monitor and manage sex offenders in the community than statutory (parole) supervision alone
- Identifying and providing **prevention and early intervention programs with sex offenders** is critical in any holistic approach to protecting communities and addressing sexual offending. Prevention programs targeting potential abusers, who have not actually committed an offense but may be at risk of doing so, are not as developed as other types of programs but clearly demonstrate an opportunity for prevention. Successful programs such as Stop It Now! (e.g. US, UK, Canada, the Netherlands) and Project Dunkelfeld (Germany), should be reviewed.
- The need to **address harmful sexualised behaviours in children and young people**, to prevent future offending has been addressed in the recent *Royal Commission into Institutional Responses to Child Sexual Abuse*. Volume 10, of the Final Report handed down in December 2017, was dedicated to children and young people with harmful sexual behaviours. All 7 recommendations delivered in Volume 10 are aimed at ensuring that there is an evidence-based response (e.g. Bravehearts' Turning Corners program).

Consultation Questions

Does your organisation support public registration of registered child sex offenders?

Bravehearts believes that the current proposal for a national public register is ill-informed and will not achieve the intended aims of preventing sexual offences against children and enhancing community safety. We believe it will not have any real impact on deterring offenders or providing community members with a means for managing potential risks.

Deterrence: Impact on Recidivism

Research into the effectiveness of sex offender registration and notification laws, such as Megan's Law in the United States, generally show that these measures do not lead to significant reductions in recidivism (e.g., Zgoba, Veysey, & Dalessandro, 2010; Zgoba, Witt, Dalessandro, & Veysey, 2008; Tewksbury, Jennings & Zgoba, 2012). A recent, long-term evaluation of Megan's Law examined the sexual and general recidivism rates of 547 convicted sex offenders released before and after the enactment of the law in New Jersey. Offenders were followed up for an average period of 15 years. The results of this evaluation showed that sex offender registration and notification legislation has

not had a significant impact on sexual or general reoffending rates for sex offenders overall in the past two decades (Zgoba, Jennings, & Salerno, 2018).

Sandler and colleagues (2008) explored differences in sexual offense rates in New York State before and after the implementation of state-wide sex offender registration and notification laws. This study involved analysing more than 170,000 recorded sexual offence arrests for the years 1986-2006, and found that the large majority of sex offence arrests (95%) were of first-time sex offenders. The authors concluded that sex offender registration and notification laws have not reduced sexual offending by first-time offenders (they do not act as a deterrent) and have also not impacted significantly on recidivism rates of convicted offenders (Sandler et al., 2008).

Along with not being found to impact significantly on overall recidivism rates, sex offender registration and notification laws have been shown to have adverse impacts on offender reintegration factors, such as the ability to obtain housing, employment and prosocial supports, all of which have been shown to be significant risk factors for reoffending (Grossi, 2017).

Providing Community Members with a Means to Manage Risk
Registration laws typically refer to the belief that the public are better able to protect themselves and their children by being informed that a released sex offender resides in the neighbourhood. However, this is not true, as it fails to recognise that only around 10% of offenders are reported to the authorities, only a percentage of those will be convicted, and only a percentage of these being eligible for registration.

It is suggested that these laws are based on the false but deceptively simple and popular belief that the best way to protect children is to identify all the known 'bad' people. Given what we know about sex offenders, the likely impact of these types of laws is minimal. The reality is that community notification is unlikely to have any impact on the majority of men and women who are responsible for most sexual violence. As discussed above, the majority of offenders never come into contact with the criminal justice system and will never be subject to registration. Community notification will only ever identify a miniscule number of sex offenders as the laws can only apply to convicted/known sex offenders (Stucky & Ottensmann, 2016).

It may be that these laws provide the opportunity, motivation and impetus for the community to educate children about personal safety and protective behaviours; however to be of any benefit, this can not only be in relation to known offenders. Equipping children with the knowledge and skills they need to avoid risky situations, giving them an understanding of their rights to protect their own body and helping adults empower children to recognise early warning signs, stay safe and speak out are much more powerful tools for protecting our children.

Notifying one community does not prevent an offender from visiting a community further away which has not been 'notified'. It has also been argued that sex offenders may gravitate towards large cities, inner city suburbs or more vulnerable towns where resources and community cohesion may be most strained.

Being notified that a convicted sex offender is about to move into your suburb/postcode can have negative effects on residents. Interestingly, most results have indicated that communities subject to notification laws report increased anxiety due to notification because of the lack of strategies offered for protecting themselves from sex offenders (Whiting, Day & Powell, 2016a). We note that there has been no mention of how Government will support community members in knowing how to respond to any information they are given through a publicly available register.

What legislative, systems and resourcing implications would a National Public Register have on responsible agencies?
Although there are no comments or consideration provided in the current Consultation Paper on costs and resourcing, in the United States, law enforcement officers and probation officers have reported concerns that community notification has increased labour and expenditures (Association for the Treatment of Sex Abusers, 2005). Likewise, Fitch (2006) noted that the financial costs of implementing community notification are high:

> "The cost of introducing and maintaining a system of community notification is indisputably high... [m]illions of dollars are required to operate the systems in a manner likely to achieve success."

It is noted that costs are dependent on a number of factors, including geographic size of the area covered and the population density. In California alone, costs of maintaining the register and implementing notification in that State costs an estimated $15 to $20 million dollars per year (Bonilla & Woodson, 2003 cited in Fitch, 2006). In comparison, the average cost to hold a sex offender in a facility in 2010 was $175,000 (Hynes, 2013). These cost and resource implications for police, community corrections, and other agencies supporting the offender in the community must be taken into consideration, particularly in relation to the many questions in respect to the effectiveness of community notification to achieve its aim of public safety.

The cost involved must be measured against actual effectiveness based on research. The greater expense of a public register (as compared to a police register) should be otherwise spent on more effective, evidence-based methods of prevention and policing.

What are the timeframes associated with any required legislative and systems changes?
This appears to be an incredibly rushed and ill-conceived consultation. We would like to see a proper debate, more information on the proposed structure of the scheme and thorough consideration of the research, available evidence, and the implications of going down this legislative path.

What are the legal implications associated with a National Public Register? What are the privacy implications associated with a National Public Register?
Arguments against a public register signal potential legal issues with such an approach. The public register may 'brand' all offenders including those who have every chance of not reoffending again, reduce their privacy, and subject them to harassment by vigilantes. If offenders are hounded from place to place, the stress may influence them to reoffend (we have seen evidence of this in Australia, for example the release in Queensland of convicted sex offender Dennis Ferguson)

Other potential legal issues may include:

- The register may inadvertently reveal the name of the victim.
- The register may brand innocent members of the child sex offender's family.
- There may be victimisation of innocent individuals whose name or physical appearance are confused with those of offenders.
- The Western Australian model (discussed below under the last Consultation Question) includes the introduction of legislation criminalising vigilantism.

What is required to ensure data quality and accuracy of information on a National Public Register?
Resourcing and funding will have to go into ensuring the quality and accuracy of information on a public register. We question where the money for this register is coming from, when there are known, effective responses that could benefit from funding.

Are the types of offenders proposed to appear on a National Public Register (i.e. registered child sex offenders) appropriate? Are there exceptional categories of offenders that should be exempted from publication on a National Public Register?
As noted above, the proposed offenders targeted through this legislation will be limited (we are not by any means suggesting it should be expanded). The reality is that a public register will not achieve the stated aims as they will only ever provide information on a small percentage of offenders.

We are concerned that the way the Preliminary Model is presented, a juvenile offender, while not registrable as juvenile, will be placed on the register once they turn 18. We completely oppose this suggestion. All of the reasons why juvenile offenders should not be registrable, apply to them when they turn 18. Opponents of sex offender registration and notification argue these policies have collateral impacts on the youths' social, mental health and academic adjustment. Consistent negative effects of community notification policies include: difficulty securing and maintaining employment, housing disruption, physical assault, property damage, relationship-loss, verbal/physical threats and harassment (Harris, Walfield, Shields & Letourneau, 2016; Terry, 2015).

Is the proposed length of time for publication of information about a child sex offender on a National Public Register appropriate?
We note that current registrable periods are consistent across each State and Territory, ranging from 8 years to Life, depending on the offence category. We would note that the length of time on the current registers should be based on the level of assessed risk an offender poses, of which the current offence may not be the best or sole indicator.

What categories of information about registered child sex offenders should be published on a National Public Register? What categories of information about registered child sex offenders should be excluded from publication on a National Public Register?
We do not support a National Public Register.

As noted below, evaluations of the UK approach, Sarah's Law, demonstrate that restricted and controlled disclosure of information to community members has fewer negative consequences than open public registers.

We also do not support the proposal that the National Public Register would be available to any member of the public. As noted below, the Western Australia model limits the register to a local search, allowing individuals to only search within their local area. The 2016 evaluation of the Western Australian register (Whitting, Day & Powell, 2016b) suggested that the limited notification approach meant that many of the issues experienced through the more widespread and intrusive US model, may have been avoided.

How should the effectiveness of a National Public Register be assessed?
If the National Public Register goes forward, it is critical that there be a robust, independent evaluation that includes, not just level of use, cost effectiveness and the impacts of the register on offending behaviour, but also whether it has had any impact on the safety of children through the Government's stated objectives of (1) deterring offenders and (2) providing community members with a means for managing potential risks.

Are there other options that should be pursued for publication of child sex offender information?

Sarah's Law

After reviewing broad level community notification laws the United Kingdom 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. Although the public pressured law makers to introduce sweeping legislation after Sarah's death, the United Kingdom did not respond emotionally to this high-profile crime (Terry, 2015).

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.

In August 2010 it was announced that the scheme would be rolled out to a further 20 police force areas by October 2010. The Home Office has since invited remaining jurisdictions to consider introducing the scheme. In 2014, this scheme was rolled out across England and Wales, and shortly thereafter, Scotland introduced a similar scheme following its own pilot (Whitting, Day & Powell, 2016a). Evaluations of the pilot scheme in both England and Scotland suggest limited and controlled disclosure of information to community members has fewer negative consequences than blanket disclosure, as typified with *Megan's Law* in the US (Whitting, Day & Powell, 2016a).

Western Australia Model

In 2011, Western Australia introduced legislation which provides for the public disclosure of limited information relating to released, adult, repeat child sex offenders. This law was introduced in response to public outcry following the sexual homicide of a seven year old girl in 2006 (Whitting, Day & Powell, 2016b).

This scheme provides a three tiered approach, providing:

- Information on missing sex offenders
- A local search facility that allows members of the public to search their local area (by postcode) for:
    - Dangerous sexual offenders subject to supervision orders under the Dangerous Sexual Offenders Act 2006;
    - Serious repeat reportable offenders;
    - Persons who have been convicted of an offence punishable by imprisonment for 5 years or more, and concern is held that this person poses a risk to the lives or sexual safety of one or more persons or persons generally.

  The search results provide images of the offenders in the area, but does not provide addresses.

- Parents or guardians with the option to enquiry on whether or not a person of interest, who has regular unsupervised contact with their child, is a reportable offender (modelled on *Sarah's Law*).

The registry that operates in Western Australia differs from sex offender registries implemented in the US and UK. The criteria for offenders listed on the register in Western Australia are further restricted, only showing dangerous, high-risk and recidivist offenders who reside in close proximity to the person conducting the search. Other safeguards were also implemented to lessen the risk of vigilante behaviour, including the introduction of legislation criminalising vigilantism and the creation of two different vigilante offences, stating individuals who are found guilty of misusing the information made available can be liable to up to 10 years imprisonment (The Government of Western Australia, 2012). Individuals who attempt to search the database also have to verify their identity, and any photographs that result after a search are watermarked with the full name of the citizen who performed the search, allowing the source of illegally reproduced photographs to be traced. Additionally, offenders on "tier two" have an extraction plan in place in the event of a vigilante attack (Whitting, Day & Powell, 2016b). Since the introduction of the scheme, only one person was charged with vigilantism in the first 29 months, suggesting the safeguards implemented to minimise vigilante behaviour have been successful.

As noted earlier only 6% of convicted sex offenders were eligible and subjected to notification in Western Australia. The following are extracts from the evaluation of the impact of the Western Australian model:

- 39 offenders were subjected to tier one notification [missing offenders] between 15 October 2012 (when the website went live) and 27 February 2015. Of these, 6 were subjected to tier one notification on more than one occasion during this period (4 offenders were subjected to notification on two separate occasions and 2 offenders were subjected to notification on four occasions). As at 27 February 2015, 6 offenders remained on the missing offenders register (i.e., tier one).
- Within this same period, 86 offenders were deemed to meet the tier two criteria [dangerous and high risk] and thus were potentially subject to notification (as notification in this case is contingent upon a member of the public who resides in the same locality as the offender performing a local search).
- The data provided by the police agency indicates that there were 182,475 hits on the community notification website between 15 October 2012 (when it went live) and 27 February 2015. Over this period, 36,837 tier two searches were performed and 892 enquiries or requests for assistance were received (542 via the website and 350 via email), the vast majority of which were in relation to tier two. It is not known how many telephone enquiries were received, as no record is kept of these. Unfortunately, as only the total number of hits, searches, and enquiries were provided, it is not possible to examine trends in usage over time.
- Ten tier three applications [parent of guardian making an inquiry about a reportable offender] had been received as at 27 February 2015; however, two of these were duplicates of previously submitted applications and one was withdrawn because the applicant discovered through other means that the person of interest (an associate of her ex-husband) is a convicted sex offender.
- A key theme that emerged from the analysis was that the introduction of the scheme had not resulted in many of the adverse consequences that the police had anticipated. It is probable that their expectations were founded on the evidence from the United States, where community notification is much more widespread and intrusive. A consistent finding

of this body of research is that community notification adversely impacts offenders' psychological well-being

- From the perspective of the police, the scheme has had on the whole a limited long-term impact on offenders. It would appear that the distress and anxiety experienced by offenders prior to the scheme's implementation arose from misinformation and misconceptions about the nature of the scheme and largely dissipated following its implementation.
- From the perspective of the police officers interviewed, a major source of offenders' anxiety surrounding the introduction of the scheme was a fear of vigilantism, a concern shared by the police. Some offenders reportedly drastically changed their appearance around the time the scheme came into effect, presumably out of fear they would be targeted by vigilantes….. A subsequent search of the agency's internal evidence briefing system revealed that only one individual had been charged with a vigilante offence as at 27 February 2015.
- A key concern reported by Whitting et al. (2016) was that the introduction of the scheme would lead to offenders going underground. This concern does not appear to have come to fruition. On the contrary, there was a perception among those interviewed that the introduction of the scheme had improved compliance, at least among some offenders. A few offenders who had failed to report and whose whereabouts were unknown reportedly 'surrendered' themselves to police upon being published on the missing offenders register.
- One explanation that could account for the scheme's impact being smaller than anticipated is that participants' expectations were shaped by the experience in the United States, where notification is much more widespread and intrusive. Although the United States laws were originally intended to target high risk sex offenders, the purpose and scope of these laws has expanded over time and the number of offenders subjected to notification has grown exponentially.

As noted by Bravehearts in the media around the current Consultation Paper (9th January), we question the timing of the paper and that it appears the Government is rushing the proposal through. We are concerned that a decision appears to have been made to introduce a public register when all of the evidence and research indicates that this approach is expensive and the least effective approach in preventing child sexual offences. Money would be better spent and our children would be safer, if we took a holistic, evidence-based approach.

While we thank you for the opportunity to provide this submission, we believe that a greater level of debate and consideration of the research and evidence behind public registers and their effectiveness is needed. Please contact us on [redacted] if any further information is required.

Kind Regards,

Hetty Johnston AM GAICD
Founder & Executive Chair

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