

POSITION STATEMENT



Bravehearts
Educate Empower Protect
Our Kids

Silencing Victims

The silence, secrecy and shame that surrounds victims and survivors of child sexual assault are the offender's best friend and our children's worst enemy. Silence and secrecy are always the facilitator, rarely the solution. Criminalising a victim/survivor's right to speak out and break their silence, to identify themselves as a victim of sexual harm not only perpetuates the harm, disempowerment and fear experienced by survivors but it is a breach of their human rights. This response can cause just as much harm as the offending itself. Victims of sexual assault have had so much taken from them by the offender, to then have a system further strip them of their rights to have a voice, to share their story without shame, to regain control of their lives, can have serious unintended adverse impacts.

It is fair to say that most victims of crime do not want to be publicly identified but for those that do, their right to voice and agency must be respected.

One of the most disempowering aspects of the criminal justice system for victims of child sex assault is losing their voice and their identity as the person harmed by the offence. In a system where victims very often get lost as the State takes on the "identity" of the victim, it is vital that victims' voices and rights are protected. For many victims of child sexual assault, the feeling that they are outside and/or unimportant to the process can have a devastating impact on their healing process and their ability to deal with the crime perpetrated against them. Protecting their voice provides them with a level of power and control over their experience. To have that right denied to a victim is debilitating.

PROHIBITIONS AGAINST VICTIMS SPEAKING OUT

Legislation exists across the country with the primary aim to protect vulnerable victims. Specifically, these types of legislation exist only in relation to victims of sexual assault, continuing the myth that victims of child sexual assault and exploitation are more vulnerable than victims of other crimes, and that there is an inherent shame that surrounds sexual victimisation.

The #LetHerSpeak campaign that arose in Australia has sparked a nation-wide review of laws that currently prohibit victims to speak out. While only Tasmania and the Northern Territory do not allow victims to self-identify (at the time of writing this Statement), other jurisdictions across the country have variations that allow victims to apply to the court to speak out (as of mid-2019, the Tasmanian government has committed to reviewing the legislation, and other jurisdictions, including, for example, Victoria and South Australia are reviewing current provisions to ensure that the rights of victims to choose to speak out are maintained).

Child sexual assault survivor Grace Tame, whose two-year fight for the right to identify herself as the victim of former teacher Nicolaas Bester sparked the #LetHerSpeak campaign, noted that: "Journalists, commentators and even my perpetrator have been able to publicly discuss my case, I'm the only one who was not allowed to." (<https://www.abc.net.au/news/2019-08-12/grace-tame-speaks-about-abuse-from-schoolteacher/11393044>).

It is important to note that such restrictions exist not just in the criminal justice system, but also the child protection systems across the country. 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.

PROTECTING VICTIMS

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

- That public identification is harmful;
- That the victim is protected from this assumed backlash or re-victimisation by virtue of maintaining their silence and secrecy;
- 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 freely speak out and be heard subsequently 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 and 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 their boundaries and re-instil self-esteem;
- This legislation will validate and entrench the cultural ‘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 recognises that it is important to achieve a balance between protecting victims of child sexual assault 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 own voices.

Why is the protection of victim voice and agency so important?

- People, young and old, want to have their say;
- It is empowering to ensure 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.

While Bravehearts supports and acknowledges legislation to protect victims 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.

BRAVEHEARTS' POSITION

Bravehearts acknowledge that many 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.

We strongly advocate for changes to legislation that would permit the victim to identify themselves, if the victim is over the age of eighteen, not considered 'especially vulnerable' and their consent has been provided without coercion or exploitation.

Where the victim is under the age of eighteen and they or their family wish to speak out, this should be permitted by the court unless there are exceptional reasons why they should not.

Finally, we note the concern that identifying the name and/or details of one victim may lead to the identification of other victims in the same proceedings, where those victims have not waived their right to anonymity. It is our view that the rights of a victim to waive anonymity should always be respected, 'if' publication of a victim's identity will not, or is not likely to, reveal the identity of another victim who has not given their consent to be identified.



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