

Submission to the  
NSW Sentencing Council

Standard Minimum  
Non-parole Periods



October 2013

### **About the Authors**

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

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

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# About Bravehearts Inc.

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

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

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

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

## **EDUCATE**

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

## **EMPOWER**

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

## **PROTECT**

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

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

# Bravehearts Submission

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## Feedback to Consultation

### **What offences should be standard non-parole period (SNPP) offences under the SNPP scheme and how those offences should be identified?**

As an agency that is focussed on advocating for appropriate and effective responses to child sexual assault, Bravehearts' response to the current consultation is particularly focused on the application of the proposed standard non-parole period scheme to child sex offences.

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

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

Standard minimum non-parole periods have been identified as:

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

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

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

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

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

It is crucial that the aggravating or mitigating factors are clearly defined within the legislation to ensure that the integrity of the standard non-parole period scheme is not depleted.

Any conditions on which courts can set longer or shorter standard non-parole periods must be clearly defined and restricted by legislation. Particularly in respect to mitigating factors that may be used to provide for shorter than prescribed non-parole periods, Bravehearts is concerned that such measures will result in the 'watering down' of a standard non-parole period scheme.

There are particular concerns around factors mitigating sentences being handed down in child sexual assault offence matters, in comparison to other offence types.

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

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

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

Sex offences are different to other offences. While it is conceivable that there may be mitigating factors for first time offenders, consideration of appropriate mitigating factors must be made with caution.

Bravehearts supports the requirement that in any sentencing where a court deviates from the standard non-parole period, that the reasoning be clearly recorded in the sentencing remarks.

**The level at which the SNPPs should be set for those offences?**

It is our position that in setting the standard non-parole periods, consideration must be given to the range of objective seriousness of offence categories.

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

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

This would mean that for the offence of “sexual intercourse with a child between 10-14, aggravated offence” attracting a prescribed maximum sentence of 20 years, the standard non-parole periods would be:

- 6 years for a low-range offence
- 10 years for a mid-range offence
- 16 years for a high range offence