



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.

15th January 2020

New South Wales Sentencing Council
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Sydney, NSW 2001
Email: sentencingcouncil@justice.nsw.gov.au

Submission: Homicide Consultation Paper

To Whom It May Concern:

Bravehearts is pleased to provide this submission in relation to the New South Wales Sentencing Council's *Homicide* Consultation Paper.

As an agency that works with, and advocates for, survivors of child assault and exploitation, we actively advocate for evidence-based legislative responses that are focussed on the protection of children and young people and that provide a framework which protects their rights.

We note that many of the issues in the current Consultation Paper are outside our remit and our expertise, however we wish to submit feedback in relation to Chapter 5, Sentencing for Child Homicide.

The issues raised within this Chapter are similar to those considered by the Queensland Sentencing Advisory Council and the Queensland Government and Opposition in early 2019.

Bravehearts, specifically our Founder, Hetty Johnston, was involved in intensive lobbying on the back of what we (and many others) viewed as significantly inadequate sentencing relating to the death of children who had additionally experienced abuse and neglect at the hands of their parents or those with responsibility to care for them.

The statistics presented in the Consultation Paper show that when sentencing for murder of a child NSW courts are handing down significantly longer sentences than for other cases of murder (with the provision for a special SNPP of 25 years for matters where a victim is under 18). However, as stated in the Consultation Paper, "sentence lengths for child manslaughter may not adequately reflect the seriousness of these cases".

Reflected in the current paper is the, at times, complexity of matters involving the death of a child. As the Queensland Sentencing Advisory Council (QSAC) suggested in their review, three of the major issues impacting on prosecuting child homicide include: the difficult in determining

cause of death, the common involvement of parents, carers or other family members, and establishing intent.

One of the reform options put forward in the current paper, is the possibility of introducing a new offence of child homicide. The paper notes the private members bill introduced in Queensland in 2019 (*Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019*) proposing a new offence of child homicide, and that the bill failed to pass, with many submissions opposing the bill as they opposed mandatory sentencing.

We would like to acknowledge that Bravehearts opposed this bill principally because in our view the bill did not address many of the issues and recommendations made by the QSAC review and was not in fact supported by the findings of the review. It was our position that establishing a brand-new offence, as proposed, did not address many of the issues that lead to the charge of manslaughter rather than murder.

Additionally, while we fully support the introduction of mandatory standard non-parole periods for homicide and manslaughter offences, we were concerned that the proposition in the private members bill in Queensland did not allow for consideration of individual circumstances in an offence type where circumstances can vary significantly. An example had been given, in Queensland Hansard, of two parents being charged with the same offence (manslaughter) on the death of their child, where a father pled guilty to manslaughter of the child as a result of violent assault and abuse over a period of time; the mother also pled guilty on the basis of not providing medical assistance for the child, within the context of domestic violence and manipulation and threats from the father. If the private members bill had passed, it would suggest that both are equally culpable, and both would be subject to the same minimum sentence.

Bravehearts instead supported the recommendations of the QSAC report and the amendments in the *Criminal Code and Other Legislation Amendment Bill 2019*.

Currently in NSW (as in many other jurisdictions), the sentencing for the death of a child as manslaughter does not meet community expectations nor do sentences properly reflect the nature of these crimes and the defencelessness and vulnerability of the child victim.

In place of introducing a new offence of 'child homicide', we advocate, as we did in our submission to the *Criminal Code and Other Legislation Amendment Bill 2019* (Qld), that the definition of murder be expanded to include 'reckless indifference to human life' to allow for matters where intent to murder is difficult to establish (for example in cases where a child has been subject to abuse and/or neglect).

In addition, we also support the incorporation of the 'defencelessness and vulnerability' of victims under the age of 12 as an aggravating factor.

We would suggest that when reckless and callous acts result in the death of a child, when death is probable as the result of that act, the individual is just as culpable as a person who intends to kill a person.

We thank the NSW Sentencing Council for inviting our participation in this review. Please contact us on research@bravehearts.org.au if further information or clarification is required in relation to this submission.

Kind Regards,



Hetty Johnston AM GAICD
Founder & Executive Director



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