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.

14th February 2020

Department of Justice
Office of the Secretary
GPO Box 825
Hobart, Tas 7001
Email: haveyoursay@justice.tas.gov.au

Submission: *Sentencing Amendment (Dangerous Criminals and High Risk Offenders) Bill 2020*

To Whom It May Concern:
Bravehearts is pleased to provide this submission in relation to the *Sentencing Amendment (Dangerous Criminals and High Risk Offenders) Bill 2020*. We note that the Bill is part of the Tasmanian Government's commitment to law and order reform, and we commend the government on its focus on community safety.

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 for ensuring appropriate responses to those who offend.

It is in within this context that we provide the following feedback on the current Bill.

We note that the current Bill has two specific purposes: 1) to reform current dangerous criminal declaration provisions within the *Sentencing Act 1997* and 2) to establish an order scheme for High Risk Offenders, to facilitate post-sentence supervision of serious sex and violence offenders in the community.

Reforming current dangerous criminal declaration provisions
As the government would be aware, issues with the current dangerous criminal declaration provisions have been addressed in reports by both the Sentencing Advisory Council ('Sex offence sentencing. Final report', 2015) and the Tasmania Law Reform Institute (Research Paper no.4, 'A comparative review of national legislation for the indefinite detention of 'dangerous criminals'', 2017).

We note there are new provisions in the current Bill include:

- *Providing for another judge, other than the sentencing or convicting judge, to hear an application for a dangerous criminal declaration;*
- *Requiring the Court to be satisfied to a high degree of probability that the offender is a*

Bravehearts Foundation Ltd. **bravehearts.org.au**
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917

serious danger to the community before making a dangerous criminal declaration;

- *Providing a list of mandatory factors that the Court must take into account when considering whether to make a dangerous criminal declaration;*
- *Providing that the prosecution bears the onus of proof in applications for dangerous criminal declarations;*
- *Providing for mandatory periodic reviews of dangerous criminal declarations initiated by the Director of Public Prosecutions, and reviews initiated by the offender where the Court grants leave on the grounds that exceptional circumstances apply; and*
- *Providing a power for the Court to make pre-release orders, setting out requirements that apply to an offender before the Court makes a decision on whether to discharge a dangerous criminal declaration.*

In relation to the specific amendments in the current Bill, Bravehearts supports the proposed changes. We believe that reform is necessary to ensure legislative effectiveness and the protection of criminal justice and human rights principles. The reforms proposed in the current Bill clearly aim to address the criticisms and concerns with the provisions under Division 3 – Dangerous Criminals of the *Sentencing Act 1997*.

It is Bravehearts view, however, that the reforms do not adequately address several issues with the current approach.

The major concern we have with the current and proposed amendments, is that it relies on a court to be willing to make a prediction on the level of risk of reoffending at the time of sentencing.

Courts across Australia have the capacity, at the time of sentencing, to provide an indefinite term for prisoners if it is considered appropriate. The difficulty in ordering indeterminate sentence at time of sentencing is that there is little basis to judge risk.

Courts cannot consider whether the offender will agree to undertake or even complete a rehabilitation program let alone be provided with an assessment of its effectiveness. The stated reason why this type of sentencing is rarely used is that pre-sentence assessment of risk provides little indication on whether the offender is likely to re-offend in several years' time after he or she has completed their head sentence.

We note this concern was raised by the Sentencing Council (2015) who recommended "[t]hat the dangerous criminal provisions contained in the *Sentencing Act 1997* (Tas) should be replaced with supervision and detention orders based on the unacceptable risk posed by the offender at the time of release."

While Bravehearts supports the proposed reform of indefinite sentencing provisions for dangerous offenders at the time of sentencing, we believe to effectively protect children, young people and the community more broadly, these laws must be complemented by continued detention legislation based on the level of risk posed at the end of an offender's sentence.

Bravehearts has a long history of lobbying around sentencing, management and release of sex offenders. Indeed it was on the back of Bravehearts tireless lobbying after previously convicted sex offender, Robert John Fardon, was sentenced in 2001 for the 1999 abduction and murder of nine-year old Keyra Steinhardt, that Queensland became the first jurisdiction to introduce legislation that

Bravehearts Foundation Ltd. **bravehearts.org.au**
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917

allows for the continued incarceration of sex offenders who have served their term of imprisonment, but who are judged by a court to represent an ongoing, unacceptable risk to the community if released.

The main premise of continued detention legislation is that there are a number of offenders who remain a significant risk to the community at the completion of their sentence. In recognition that there are offenders, such as Fraser, who either cannot or will not control their predatory behaviours and urges, Bravehearts advocated for legislation which would focus on protecting children and others who could potentially be victims of known dangerous sex offenders who are judged not to have been rehabilitated and were seen as likely to reoffend. It is our belief that we have a responsibility to protect our children and communities from those offenders who pose a serious and genuine risk. The protection of children from offenders known to be a risk must be our first priority.

In 2003 the Queensland government announced it would introduce new laws to block the release from prison of sex offenders who are assessed as posing a continuing serious danger to the community. The *Dangerous Prisoners (Sexual Offenders) Act 2003* was described by the then Queensland Premier as "a 'community protection test'… governing the release from prison of violent sex offenders and paedophiles".

The legislation allows for an application to the Supreme Court by the Attorney-General in cases where there is a belief that a convicted sex offender poses a risk of reoffending. The Court assesses the risk and has the power to either impose a continuing detention order or an order requiring strict supervision upon release. In making its decision, the Court takes into consideration the offender's criminal history, behaviour since conviction, participation in treatment, evidence indicating the level of risk and other relevant evidence, including psychological reports. A continuing detention order is made when an offender has been assessed as posing an unacceptable risk of reoffending, and/or that the risk of reoffending *cannot* be managed in the community. Where a continuing detention order is imposed, a system of periodic review is established.

Bravehearts position is that sex offenders should only be considered for release if a minimum of three psychologists/psychiatrists with expertise in sex offending agree, that (a) the offender poses a low risk of reoffending and (b) that level of risk can be managed in the community.

Since the introduction in Queensland in 2003 of the *Dangerous Prisoners (Sexual Offenders) Act*, other Australian States have followed with similar legislation as a way of managing dangerous offenders. In 2006 both Western Australia (*Dangerous Sex Offenders Act 2006*) and New South Wales (*Crimes (High Risk Offenders) Act 2006*) introduced versions of the Queensland Act. In Victoria the *Serious Sex Offenders (Detention and Supervision) Act 2009* came in force in January 2010 and in 2013 the Northern Territory introduced the *Serious Sex Offenders Act 2013*.

We urge the Tasmanian Government to consider introducing similar legislation.

<u>Establishing a High Risk Offender order scheme</u>

We note the Bill additionally introduces the establishment of High Risk Offender (HRO) orders to facilitate post-sentence supervision of serious sex and violence offenders in the community. The proposed new provisions will:

- *Provide that the safety of the community must be the paramount consideration of the Court in determining whether to make a HRO order;*

Bravehearts Foundation Ltd. bravehearts.org.au
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917

- *Provide powers for the Court to impose a wide range of conditions that relate to an offender who is subject to a HRO order;*
- *Provide that a HRO order may be for a term of up to 5 years, with the Director of Public Prosecutions able to apply for subsequent HRO orders to continue the period of supervision for an offender if required; and*
- *Provide penalties for breaching a HRO order, along with relevant powers of arrest and detention.*

Bravehearts supports the introduction of a High Risk Offender order scheme. We would however advocate that this be part of a continued detention scheme as described earlier; where the Court assesses whether to impose a continuing detention order or an order requiring strict supervision upon release.

We note that sex offenders will always pose a level of risk when released into the community, and that that risk must be proportionally managed. Mandatory conditions of the release of any child sex offender should include:

- A clearly defined and communicated management program;
- Mandatory post-release treatment programs;
- Mandatory assessment and monitoring;
- Conditions that prevent released child sex offenders from associating with other known offenders;
- Mandatory requirement for all child sex offenders to *immediately* notify any change of address or employment and any short or long-term vacations;
- That all sex offenders forfeit passports;
- Conditions that restrict the offender's access to children, including, but not limited to working with children; and
- The right to return the offender to a custodial setting should any conditions of release be breached; in addition to
- Any other conditions deemed appropriate for the individual offender.

We also advocate for a 'discharge readiness' approach, that includes the development of a detailed "Community Safety Plan" and involves family members and significant others in the relapse prevention plan. This approach should focus on relapse prevention, managing cognitive distortions, victim empathy and coping strategies. Treatment teams would determine that offenders can fully describe the negative impact of their sex offending on their victims, acknowledge and accept past sex crimes, articulate a commitment to ongoing rehabilitation, correct all cognitive distortions, able to control deviant sex urges and interests, can describe potential risk factors and internal warning signs, can cope with risky situations, follow rules and comply with supervision, and displays no inappropriate impulsivity or inappropriate emotions.

While there is much debate around the mandatory exposure to treatment programs for sex offenders (including the need for offenders to admit guilt and be voluntarily willing to attend rehabilitation programs), Bravehearts believes that all sex offenders must complete a treatment program and that resourcing must also be targeted to ensuring that adequate and effective treatment programs are available in the community, and post sentence completion, to provide the best opportunity to assisting offenders in the ongoing management of their offending risk.

Bravehearts supports the trial of a number of measures that may enhance the supervision of offenders in the community. This includes:

Bravehearts Foundation Ltd. **bravehearts.org.au**
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917

Polygraph testing

Bravehearts supports enhanced and strengthened approaches to supervising offenders in the community. 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.

Based on the experience of overseas usage of polygraphs in the community supervision setting, Bravehearts advocates for:

- The introduction of the use of polygraph testing as part of a battery of assessment and monitoring tools for child sex offenders in Australia.
- A trial be put in place, guided by current practice in International jurisdictions.

Circles of Support and Accountability (COSA)

The period immediately following the release of high-risk 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.

COSA originated in Canada in 1994, evolving from restorative justice principles. The primary goals of COSA are to support the offender (known as the 'core member'), while holding them accountable for their actions in order to successfully reintegrate them into the community after prison – and in turn, prevent reoffending. While COSA has an emerging international evidence base, the program has only recently been introduced as a trial in South Australia through the Offenders' Aid and Rehabilitation Service (Bravehearts has been involved in an evaluation of the program, headed up by Drs Kelly Richards and Jodi Death from Queensland University of Technology. The report of is due out in in March 2020).

COSA consist of groups of trained volunteers (supported by an 'outer circle' of professionals) who meet regularly with the core member. Volunteers assist core members to create prosocial lives in the community by helping with day-to-day matters such as housing, family, shopping and cooking, transport, finances, and socialising. Volunteers also hold core members accountable by monitoring them to ensure they adhere to their release conditions (e.g. not consuming alcohol or accessing pornography) and by challenging offence supportive behaviours or attitudes. Each Circle meets weekly and volunteers may also meet core members outside of meetings (e.g. to accompany core members to appointments or social events). COSA work closely with networks of service providers (e.g. health, housing) to link core members to services that can also support them to minimise their risk of reoffending.

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.

Additional Comments

Standard Non-Parole Periods

Bravehearts supports the use of standard non-parole periods in relation to sex 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

Bravehearts Foundation Ltd. bravehearts.org.au
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917

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.

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

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

Multiple Strikes Legislation:

Bravehearts has advocated for a specific, targeted, multiple strike legislative response to repeat, serious sex offenders, a law we successfully lobbied for here in Queensland. 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.

While our past lobbying for two strikes laws were focussed on contact offences, whereby any dangerous offender with a previous contact child sexual offence is to receive a mandatory 20 year sentence for any second contact child sexual offence, we have suggested that such legislative reform should include consideration of non-contact offences, which can be as harmful and as serious.

On behalf of Bravehearts, I thank the Tasmanian Government for the opportunity to provide feedback on this Bill. Please contact us on research@bravehearts.org.au if further information or clarification is required in relation to this submission.

Kind Regards,

Carol Ronken
Criminologist, BA(psych), MAppSoc (social research)
Director of Research

Bravehearts Foundation Ltd. **bravehearts.org.au**
National Office: (07) 5552 3000 | Fax: (07) 5552 3088 | Bravehearts Information & Support Line: 1800 272 831
Postal: PO Box 575, Arundel BC, QLD 4214 | Email: admin@bravehearts.org.au | ABN: 41 496 913 890| ACN: 607 315 917