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Submission to the
Standing Committee on Justice
and Community Safety

Inquiry into the operation of the
Prostitution Act 1992.



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About the Authors

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Introduction



Bravehearts Inc remain Australia's leading child protection advocates in the area of child sexual assault and are recognised as such nationally by governments, media and the community at large. We remain the only registered PBI dedicated holistically and specifically to the issue of child sexual assault.

While we are aware the issues raised in the area of prostitution are far wider than those confined to the focus of Bravehearts and that many of our recommendations may have wider implications, we stress that this submission is never-the-less centred around the issue of underage prostitution.

About Bravehearts Inc.



Founded in 1997 by Hetty Johnston, Bravehearts Inc. has evolved into an organisation whose purpose is to provide therapeutic, support and advocacy services to survivors of child sexual assault. We are also actively involved in education, prevention, early intervention and research programs relating to child sexual assault.

Bravehearts operates at a National level, from our Head Office on the Gold Coast, advocating and lobbying across the country, with a physical presence in three States: Queensland (Gold Coast, Brisbane and Cairns), New South Wales (Sydney and Shoalhaven) and Victoria (Shepparton). Our branch in Cairns is funded by the Commonwealth Government to deliver our proven child sexual assault prevention and early intervention programs to the Indigenous children and communities of FNQ. The programs success is achieved by Bravehearts working in collaboration with the Royal Flying Doctors and others to travel into North Queensland's most remote Indigenous communities.

Bravehearts has a regional committee in Launceston and is aiming to establish the Bravehearts' education program in the region in 2011.

Bravehearts makes a difference in child protection by:

- Assisting children and their non-offending family members to recover from the trauma of child sexual assault through therapy, advocacy and support;
- Raising awareness via initiatives such as the 'White Balloon Campaign' - a public awareness and child protection initiative;
- Protecting survivors and providing them with avenues of redress through projects like the 'Sexual Assault Disclosure Scheme' (SADS) - a means for anonymous yet official disclosure of assault;
- Providing and developing effective education and prevention programs (Ditto's Keep Safe Adventure) to empower children and young people and increase their resiliency to child sexual assault;
- Advocating for survivor's rights through participation in legislative review and reform (successful campaigns include: the introduction in Queensland, New South Wales, Western Australia, Victoria and South Australia of Continuing Sentences for dangerous paedophiles; the closure of Queensland's Department of Family Services; the introduction of Section 189, the right for children and their families to speak publicly; the introduction of the Amber Alert system in Australia; the instigation of various formal Inquiries; and successful amendments to legislation);
- Raising community awareness through participation in public debate and in the accumulation, production and dissemination of relevant research material; and
- Supporting the work of other agencies (government and non-government) and individuals in their work around child sexual assault.

The Best Interests of Children and Young People



As a signatory to the Convention on the Rights of the Child (signed by Australia on the 22nd August 1990 and ratified on 17th December 1990) the Australian governments are obligated to comply with the Articles set out by the Convention to ensure the **best interests of the child**.

The following articles are particularly relevant to this current submission:

Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement

Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Legislating to Protect Children and Young People



Minimum Age

It is Bravehearts position that the minimum age of workers in the sex industry should be set at 18 years of age. While we recognise that the age of consent in the Australian Capital Territory is set at 16 years, we believe that the nature of prostitution is such that there should be a minimum age set above the age of consent.

- 1. Bravehearts supports the age of 18 years of age as the minimum age of sex workers**

Setting the minimum age at 18 recognises the vulnerability of young people engaged in underage prostitution and specifically the vast difference between commercial sexual activity and other consensual sexual activity. Additionally this minimum age is consistent with the definition of child under the United Nations Convention on the Rights of the Child.

Responsibilities of Brothels, Escort Agencies, Parlours and Other Sexual Services

It should absolutely be the responsibility of the operator of a brothel, escort agency, parlour or other sexual service to ensure that any individual employed or providing services is above the minimum age. This must include maintenance of records of workers and relevant proof of age documents.

- 2. Bravehearts advocates that it is the responsibility of the operator of individual brothel, escort agency, parlour or other sexual service to ensure that records of workers are maintained and include relevant proof of age documents.**

Belief of Age Defence

The legal defence of honest and reasonable mistake of fact has been used in matters where a defendant argues that they were of the belief that a young person was of the age of consent. Most recently this defence has been used in a matter in Tasmania in relation to a child prostitution matter involving a 12 year old girl.

We note under the Australian Capital Territory's *Crimes Act 1900* in relation to Section 55:

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—**

- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
- (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
- (ii) the defendant was not more than 2 years older;
- (iii) and that that person consented to the sexual intercourse.

It is Bravehearts position that such a defence should only be available if:

- a) The defendant believed on reasonable ground that the young person was of or above the age of 18 (in line with the proposed minimum age for working in the sex industry);
- b) The young person is aged 15 or over;
- c) The defendant was not more than 2 years older; and
- d) If the sexual contact is proven to be consensual.

3. Bravehearts advocates for a revision of the defence of honest and reasonable mistake of fact in relation to this legislation to include a belief that the young person was aged 18 or over and that the young person was in fact aged 15 or over.

Complexity of Issue

The issue of young people becoming involved in the sex industry is complex. As identified in the 2000 National Plan of Action Against the Commercial Exploitation of Children paper, *Tomorrow's Children*, young people can become involved in the industry for a vast number of reasons and in a vast number of ways.

It is our position that children and young people, under the minimum age, should be treated as victims of sexual exploitation and as such should be exempt from charges in relation to solicitation.

4. Bravehearts advocates that young people should be exempt from solicitation offences, as children and young people under the minimum age

Responses to young people engaging in the sex industry should include sensitive approaches that provide support and assistance and focus on decreasing their marginalisation.