

Appendix A- Good Character Sentencing:

5. Options for reform

Question 5.4: Good character as an aggravating factor

1. Under what conditions could use of good character in the commission of an offence be treated as an aggravating factor?

'Good Character' could be used as an aggravating factor in the commission of an offence when a person's professional role and/or public position provides them specific access to children and/or vulnerable people, e.g., foster parent, teacher, doctor, disability support worker and, volunteers and/or community members.

Part of the problem with repeat perpetrators is that they actively cultivate a positive public perception in the community of being of 'good character' to obtain ongoing access to children. It is an active & deliberate attempt at social manipulation that allows for repeat offending.

Good character does not demonstrate lowered risk of recidivism in the case of perpetrators who are already active community members. Child sexual abuse is most prevalent in people with positions of power & authority. It is illogical to consider these factors as mitigating the severity of a sentence when these factors did not prevent the commission in the first place.

All good character references demonstrate is that a perpetrator is capable of abiding by societal rules & norms generally & simultaneously using their professional and/or public position to prey on & abuse children. This should be considered aggravating because good character is the very thing perpetrators rely on to abuse children and reoffend.

Question 5.5: Extending the special rule to all child sexual offences

1. Should the special rule be extended to all child sexual offences? Why or why not?

The special rule should be extended to all child sexual offences because child sexual abuse by nature is predatory and involves abusing positions of power to target and groom vulnerable groups. Child sexual abuse is a life sentence for those that have been abused. Child sexual abuse has a lifelong impact on survivor's health, development, relationships and lifespan.

A recent Australian Child Maltreatment Study (ACMS) found that 1 in 4 Australian children (1 in 3 girls & 1 in 5 boys) have been sexually abused with 78% of children reporting more than one offence and 42% reporting 6 or more offences. This indicates that child sexual abuse is common and recurrent.

Adverse Childhood Experiences (ACE's) such as child sexual abuse not only affect children's attachment and relationships it also impacts their health and development into adulthood. This

includes a greater risk of developing mood disorders, e.g., anxiety and depression (Choi, DiNitto, Marti & Choi, 2017), eating disorders (Williamson, Thompson, Anda, Dietz & Felitti, 2002), self-harming behaviours (Felitti & Anda, 2010; McLaughlin, Koenen, Bromet & Karam, 2017) personality disorders (Fossati, Madeddu & Maffei, 1999) and serious psychiatric disorders, e.g., PTSD and schizophrenia (McLaughlin, Koenen, Bromet & Karam, 2017).

Sexual abuse in childhood is also a predictor of chronic health conditions in adulthood, e.g., cardiovascular conditions (Allen & Donkin, 2015) with some research reporting that children who have been sexually abused die on average 20 years earlier than their peers (Felitti et al., 1998).

Child sexual abuse may also impact mother's parenting and increase the vulnerability of their children to being sexually victimized (Testa, Hoffman, Livingston, 2012). This results in cycles of intergenerational trauma and increased risk of revictimization into adulthood.

Grooming involves playing an important role in the child's life. The perpetrator frequently isolates the child from other social supports, saying that they are the only one that understands the child. Perpetrators make the child completely dependent on them for basic needs. This is intentional & malicious behaviour. This power imbalance manipulates children & often makes them feel complicit in wrongdoing.

The extent to which good character as a mitigating factor in sentencing is not well understood. Its practical effect on sentencing appears to be to reduce severity of sentencing such as shorter-term imprisonment, non-custodial sentencing, or suspended sentencing.

If the perpetrator can behave 'out of character' on one occasion it is naive to believe that they have never done so before or will never do so again. An individual's 'good character' cannot be separated from their evil behaviour. When this occurs, it allows the perpetrator to continue predatory behaviour & increases the risk of victimisation of more children.

Question 5.6: Extending the special rule to sexual offences against other vulnerable groups

1. What other vulnerable groups or offences against vulnerable groups could be subject to the special rule?

Other vulnerable groups that could be subject to the special rule include people with a disability. People with disability are more likely to be victim-survivors of family, domestic and sexual violence (FDSV) than people without disability (CRE-DH 2021; DSS 2022). According to Australian Institute of Health & Welfare (AIHW), 21% or 1 in 5 adults with a disability have experienced physical and/or sexual violence from a current or intimate partner since the age of 15. Women with a disability are 3x as likely as men to have experienced physical and/or sexual violence.

People with disability can also experience additional barriers to getting help due to discrimination, social isolation, lack of understanding around abuse, insufficient safeguards in institutional settings, dependence upon their abuser for care and threats to limit and withdraw access to medication, mobility aids and health and other services.

2. How could they be identified?

People with a disability could be identified by applying the United Nations Convention on the Rights of Persons with Disabilities, definition of a disability:

“Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Question 5.8: Extending the special rule to domestic violence offences

1. Should domestic violence offences be subject to the special rule? Why or why not?

The special rule should also be extended to domestic violence offences including coercive control, financial abuse and physical violence.

The Gender-Based Violence Pyramid shows that domestic violence occurs across a spectrum ranging from misogynistic beliefs, microaggressions and objectification to threats and intimidation, rape and physical violence. Subjecting domestic violence to the special rule ensures that it sends a strong deterrent to perpetrators of domestic violence and a zero-tolerance policy for any form of abusive and/or violent behaviour including consequences that fit the crime.

2. Should these offences be subject to the condition that the offender’s good character or lack of previous convictions was of assistance in the commission of the offence?

‘Good Character’ should be considered an aggravating factor in the commission of domestic violence offences. Perpetrators of domestic violence use their professional role, e.g., doctor to gain popularity in the eyes of the public and isolate the victim-survivor from friends and family for fear of not being believed when they disclose an offence.

A common tactic employed by perpetrators of domestic violence is DARVO (Deny, Attack, Reverse Victim-Offender). This technique relies upon the perpetrator gaslighting the victim-survivor, attacking the victim-survivors credibility and reversing the role of victim and offender by blaming and shaming the victim-survivor and slandering their character to members in the community. The DARVO tactic is heavily reliant on the good character of the offender for them to be able to create a narrative about the ‘bad character’ of the victim-survivor.