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14 February 2025
NSW Sentencing Council
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Dear Sentencing Council,

Good character at sentencing

Feminist Legal Clinic Inc. is a community legal service based in Sydney that works to advance the human rights of women and girls. Our casework and advocacy are specifically focused on defending women from male violence and human rights abuses. We welcome the opportunity to make this submission.

Introduction

As noted in the Sentencing Council's consultation paper, character references at sentencing began two centuries ago in an effort to ameliorate sentences for capital punishment when the UK's criminal code was replete with such punishments often given to poor and destitute people.¹ In Australia, capital punishment has not been employed since 1967.² Character references at sentencing may be illuminating in cases of non-violent crimes, or crimes of poverty but employing them once a conviction for sexual offences has been handed down, is anachronistic and out of touch with community expectations.

Threshold

A threshold of violent and serious offences needs to be established past which character references at sentencing are denied. Sentencing for rape, paedophilia, domestic violence or other violent offences cannot be lightened by people alleging the convicted person also performed previous good deeds. Some offences are too far outside community expectations for the offender to rescue themselves by providing recommendations of character by former prime ministers or business leaders. Does a person who commits violent crimes but lacks such luminaries as referees not deserve a

¹ [Good Character at Sentencing 2024 Consultation Paper.](#)

² [Capital Punishment in Australia.](#)

level playing field at sentencing with someone of public note? A woman committing welfare fraud in a particularly austere economic climate, so she may feed their children, is entirely different from a well connected convicted paedophile or rapist and if a referee is to be found for the welfare avoider, she should be entitled to every support at sentencing. Serious crimes against the person should not attract a character reference during sentencing or any other part of the legal process.

Retraumatization

It is clear that legal processes following disclosure of sexual abuse or assault are gruelling and frequently retraumatizing for plaintiffs.³ It is a huge leap of faith by a person who has been abused, frequently by an offender in a position of trust in their community or family, to even commence legal proceedings. After the relief of conviction, a plaintiff should not be subjected to the invalidating experience of the offender being declared of 'good character' in the courtroom. Victims' advocates specifically warn against this practice and with good reason.⁴ Sexual and violent offenders have broken the social contract so severely that there is no rescuing their reputations from this stain.

Sentencing should reflect community expectations

The privilege of character references should be denied to people convicted of serious, violent and sexual offences. It is undeniable that there is a depressing and dangerous trend in Australia for men convicted of offences against children to receive light penalties and even non-custodial sentences.⁵ Offences against children are by their nature abhorrent and should almost always result in a custodial sentence. Anything which supports the idea that a man may still be a good or decent person, despite a sexual offence conviction, flies in the face of the need to punish that offender, assuage community anger and deter other offenders.

This submission is necessarily brief because of our limited time and resources. However, we would be happy to expand on any point if required.

Thank you again for the opportunity to make this submission.

³ [Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault 2023 Discussion Paper.](#)

⁴ [Character references tell a court you're a good person. Why are convicted rapists allowed to use them?](#)

⁵ [Beaconsfield teacher who sexually preyed on nine boys dodges jail; Vic ex-teacher avoids jail for child porn; Former butcher Alan Charles Jones avoids jail over child abuse offences in WA's Great Southern; Identity of Melbourne businessman kept secret after he avoids jail for child sex offence; Child porn sting: Bulli man avoids jail; Former school principal avoids jail over 'brazen' child abuse.](#)

Janet Fraser

Convenor

Feminist Legal Clinic Inc.

Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.