

Draft Submission to the NSW Sentencing Council's Review of Good Character in Sentencing

Submitted by [Anonymous]

Introduction and Context

I write this submission as a loving brother.

I write this submission as someone who, together with my younger sister, has been fighting for justice for most of our lives. Our father sexually abused my sister from the time she was only 5 years of age until early adolescence. In 2010, when my sister was only 13 years of age, she first disclosed these horrific crimes to authorities. However, the investigation did not move forward to a prosecution. Because of our family's circumstances at the time—including my sister's young age and the overwhelming prospect of a trial—no formal charges were laid. As a result, my father was not questioned, nor were any legal proceedings initiated.

In the years that followed, he manipulated me into believing the abuse was an isolated mistake, or even an "accident." Only later, after I had turned 19 and then seriously revisited the case again in my mid-20s, did I discover the full extent of his crimes, including his admissions on a recorded phone call. He also has a history of abusing his own sister decades ago, which further underlines how his purported "good character" was effectively a mask. Despite this, he now faces criminal charges for his repeated abuse of my sister, and as her case proceeds to trial on [REDACTED], there is a real possibility that so-called good character evidence might be used in mitigation at his sentencing if he is convicted. This prospect is devastating for our family and severely undermines our faith in the criminal justice system. I welcome the opportunity to submit to the NSW Sentencing Council, but this matter is current, it is urgent, it is happening now.

I respectfully urge the NSW Sentencing Council to use this review to recommend reforms that ensure good character or lack of previous convictions cannot mitigate the sentences of those convicted of child sexual offences. The issues raised by the *Your Reference Ain't Relevant* campaign feel particularly urgent in our own case, and I thank the Council for considering survivors' voices as they undertake this important work.

Addressing the Terms of Reference

1. Extending the Limitations on Good Character in Child Sexual Offence Proceedings

Whether the requirement that an offender's good character or lack of convictions was of assistance to the offender in the commission of the offence should be removed

- **My Family's Experience**

In my father's case, he outwardly relied on community standing as a young business professional, then under 9s t-ball coach, then manager of a [REDACTED] school for under 18s, then an active father in the school community; most importantly, he relied on his role as a trusted family member. That role—and his skill in deceiving not only the immediate family but the extended family—was a critical factor giving him access to my sister. Despite this, the current wording of *Crimes (Sentencing Procedure) Act 1999* section 21A(5A) sets a high bar for proving that an offender's good character "was of assistance to the offender in the commission of the offence." Family offenders, step-parents, older siblings, neighbours, or acquaintances may not appear to have exploited any "position of authority," yet they typically rely on closeness and trust to commit these crimes. When my father committed horrendous abuse towards my sister, he was supervising her and had authority over her. Now, in the current criminal trial, she must retell the specifics of multiple sequences of aggravated sexual assault and aggravated indecent assault. If and when sentencing occurs, she will hear about his 'good character'.

- **Proposed Reform**

I strongly support removing the conditional language in s 21A(5A)—that a court must be satisfied “the factor concerned was of assistance to the offender in the commission of the offence.” Instead, good character or lack of previous convictions should be **entirely inapplicable** as a mitigating factor in sentencing for ***all child sexual offences***. Child sexual abusers frequently groom not only their victims but also entire families and communities; to call them “good people” while sentencing them diminishes the gravity of the crime and re-traumatizes survivors who see the system crediting the same qualities that enabled the abuse. My own specific experiences speak directly to how my father used a veil of ‘good character’ to turn me against my sister and my entire family, effectively recruiting me to deliver messages, letters and presents to my sister after she disclosed the abuse, and on occasion organise meet-ups with my father and his new girlfriend and their newborn son.

2. The Operation of Good Character as a Mitigating Factor Generally

- **Impact of Good Character Considerations**

When an offender’s standing or absence of prior convictions reduces a sentence, it sends a contradictory message. Sexual abuse, especially against children, is overwhelmingly perpetrated by people who appear “normal,” “kind,” or “upstanding” to bystanders. These manipulative behaviours or traits are part and parcel of their capacity to commit these crimes undetected.

- **Lack of Empirical Foundation**

The idea that a child sex offender’s previous behaviour proves they are unlikely to reoffend is undermined by countless stories—my own family’s included—where the offender has abused children for years, cultivated a benign or respectable reputation, and yet continued offending. By the time the perpetrator is caught, any “clean record” reflects not actual innocence, but simply an ability to avoid detection or to silence children. My father was lucky enough to avoid previous allegations (specifically, sexually abusing his own sister in their family home in the 1970s) from being entered into the current criminal trial as ‘tendency and coincidence evidence’. Again, the system protects his interests and reinforces the mirage of ‘good character.’

- **Recommendation**

Consideration of good character in sentencing is especially unmerited for crimes that involve intentional, reckless, threatening and malicious actions, deceit, breach of trust, and the manipulation of vulnerable child victims. I respectfully suggest a clear legislative statement to exclude good character from mitigating sentences in child sexual cases. If not a blanket exclusion, at minimum, courts should be guided to give such “character” no weight in these cases.

3. Victim-Survivors’ Experience

- **My Sister’s Story**

My sister disclosed abuse at a critical moment in her early teens. The authorities collected her statement but did not proceed because of reluctance in our family to see her endure a long trial at a young age. As a result, justice was delayed for more than a decade, during which time my father maintained a veneer of “good character,” insisted the abuse was a one-time “accident,” and manipulated me and others into questioning my sister’s account.

The emotional harm caused by seeing the perpetrator continue life unimpeded was enormous. Later, learning he had also abused other family members shattered any notion that his “decent” or “moral” traits should be credited. For victim-survivors, the idea that an abuser might later cite their “good standing” in a sentencing hearing is re-traumatizing and undermines any sense of vindication.

- **The Weight of Secondary Trauma**

Many victim-survivors already face a daunting legal process. In the event of a conviction, hearing an offender's so-called virtues outlined in court can feel like a betrayal and can discourage future survivors from speaking out. When my sister, my mother and I were finally ready to participate in legal proceedings, it was an up-hill battle against my father's extra decade of opportunities to form and instil a sense of 'good character' with a new community, new partner and new family. IT was an up-hill battle to gain recognition for my sister, gain primary victim status with Victim Services so my sister could participate in counselling, gain access to counselling for mother and I, and also participate in a criminal investigation as young adults. We have come so far and fought so hard – yet the perpetrator may be viewed as a 'good person' - by his own legal defence team and the judge - and treated with leniency.

- **Recommendation**

In line with best practices for victim-centred justice, survivors' experiences should inform sentencing law so that no child sexual abuse survivor is forced to relive the manipulation inherent in hearing a convicted offender praised as a "good person." This can be achieved through legislative reform or explicit sentencing guidelines that exclude good character mitigation in these cases.

4. Procedures for Receiving Good Character Evidence

- **Potential for Misuse**

My father's conduct demonstrates how "respectability" can mask predatory behaviour. If courts allow testimonials about an abuser's community contributions or lack of prior record, it perpetuates the grooming dynamic that abusers rely on. Indeed, many references are provided by acquaintances unaware of the offender's true behaviour.

- **Possible Procedural Reforms**

- **Stricter limits or disallowance** of character evidence in child sexual assault sentencing.
- **Heightened scrutiny** of references submitted on behalf of offenders, including clarity about whether referees understand the nature and extent of the crimes.
- In tandem with either approach, courts could be legislatively guided to give minimal or no weight to good character claims in child sexual abuse cases, reflecting the reality that many such offenders appear outwardly trustworthy yet weaponise that trust to offend.

5. Other Relevant Matters

- **Consistency and Clarity**

Reforming s 21A(5A) to remove the "assistance" requirement or to fully exclude good character for child sexual abuse would bring clarity and ensure consistent sentencing practices. This approach is also consistent with recommendations from survivor advocacy organisations like the *Your Reference Ain't Relevant* campaign and the findings of other bodies, such as the Royal Commission into Institutional Responses to Child Sexual Abuse.

- **Importance of Early Intervention**

My own family's saga illustrates how delayed or incomplete investigations enable offenders to control narratives. Further training and resourcing for police, child protection workers, and prosecutors could reduce these systemic failings. While that extends beyond the specific question of good character at sentencing, it is a crucial aspect of safeguarding children and ensuring thoroughness from disclosure to trial.

- **Conclusion and Call to Action**

In my father's case, it is galling to think that, despite his history of repeated sexual abuse (including of his own sister), he might still receive a more lenient sentence based on an outwardly "good character." My sister and I have spent our entire lives grappling with the ramifications of his crimes, and many other survivors share this experience. Legislation should reflect the seriousness and unique dynamics of child sexual abuse—where grooming, manipulation, and deception are inherent.

I therefore urge the NSW Sentencing Council to recommend:

1. **Removing the "assistance" requirement** in s 21A(5A) so that good character or lack of convictions is entirely inapplicable for all child sexual offences;
2. **Implementing procedural reforms** to ensure that, if character evidence is ever admitted, it receives no mitigating weight in cases of sexual offending against children;
3. **Explicitly prioritising the well-being and validation of victim-survivors** in sentencing considerations, to avoid retraumatisation caused by hearing the offender's positive reputation exalted.

In doing so, the Council would take a vital step to ensure sentencing law serves its core purposes of just punishment, deterrence, and protection of vulnerable children. Most importantly, it would signal that survivors' voices are heard, and that no individual convicted of abusing a child can hide behind a façade of "good character."

Thank you for considering my submission.

Respectfully submitted,

[Anonymous Brother of Victim-Survivor]