



The Children's Court of New South Wales

21 February 2025

NSW Sentencing Council
By email: sentencingcouncil@justice.nsw.gov.au

Re: Good Character at Sentencing Consultation Paper

Dear Sentencing Council,

The Children's Court of NSW is grateful for the opportunity to provide feedback on the review of section 21A (5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) ('The Act'), as detailed in the 'Good Character at Sentencing' Consultation Paper.

The Children's Court maintains the position outlined in its previous submissions regarding the benefit of evidence of character when addressing the principles of sentencing.

The Children's Court works with child and adult victims and perpetrators of sexual abuse in the criminal jurisdiction and the care jurisdiction. The effect of abuse is substantial and far-reaching, and the court commends efforts to prevent abuse and to increase reporting, improve treatment, and address harm for perpetrators and victim-survivors. Although some of the reforms would not impact Children's Court procedure, the reforms could impact Children's Court participants.

The consultation paper raises important considerations about the historical significance of character evidence in legal proceedings and whether character evidence accurately guides judges on the appropriate allocation of weight towards specific deterrence and rehabilitation. We acknowledge that equality before the law can be eroded by the discriminatory application of character evidence.



The Children's Court recognises there is a basis for the abolition of good character as a mitigating factor, but notes evidence of this nature can provide information about the offender's relationships within the community which will inform judicial determinations about the weight to be given to community protection and prospects of rehabilitation. It would be helpful to define 'character' evidence and consider whether 'character' evidence may be admissible as either a mitigating or aggravating factor, without specifying a use for 'good character' evidence.

The paper queries whether laws about character evidence should be applied differently to categories of victims or offenders. The Children's Court submits that the law should be consistent and apply equally to all offenders and all classes of victims.

Current NSW sentencing law enables the court to aggravate a sentence for abuse of a position of trust or authority (s 21A(2)(k)) and for an offence that was part of a planned or organised criminal activity (s 21A(2)(n)). These considerations enable a court to address the severity of the conduct of a person who has relied on their good character to access a victim.

Criminal proceedings in the Children's Court are guided by the principles in s 6 of the *Children (Criminal Proceedings) Act 1987*. In serious cases the Court will order a sentencing background report from Youth Justice which contains material in accordance with Clause 6 of the *Children (Criminal Proceedings) Regulation 2021*. The content of these reports assists the Children's Court to assess the background, education, capacity, and support of the young person when imposing a sentence that addresses all relevant sentencing principles.

These provisions recognise that young offenders are in a critical stage of development where the young person, their family, and their community would be better served by interventions that support the young person towards a pro-social adulthood. Currently, judicial officers in the Children's Court allocate weight to character evidence, as required by law, but a young person has had a limited amount of time to build evidence of their character. Evidence of connection and contribution is given weight because it provides insight into the environment in which the young person will be raised and the influences that will guide the young person as they enter adulthood.



There should be no distinction between children who are charged with offences that can be finalised in the Children's Court and children who are charged with Serious Children's Indictable Offences. The application of different laws that apply to offending by children is based on the science of development, and not on the categorisation of an offence.

Oral character evidence is rarely provided in the Children's Court. Any change to procedures for tendering evidence of character would have limited impact on current Children's Court sentencing proceedings. Written references, letters from parents or carers, and letters from the offender are often tendered in sentence proceedings. This evidence is used to identify whether a young person accepts responsibility, displays an understanding of their obligations towards the law and fellow citizens, and is amenable to changing their behaviour. Where there is no psychological risk assessment, this evidence aids a judicial officer in determining the weight to be allocated to the different principles of sentencing. Any legislative reform should ensure the Court maintains an ability to give appropriate weight to sentencing considerations.

Prior criminal records must be distinguished from character evidence and remain as evidence in sentencing proceedings.

If you have any issues or concerns, please contact the Court's Research Associate Tole Roebig by email at [REDACTED] or by phone on [REDACTED].

Sincerely

Nell Skinner
President of the Children's Court of New South Wales