



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: CLC/CLIC:JBjf170325

17 March 2025

The Honourable Peter McClellan AM KC  
Chairperson, NSW Sentencing Council  
GPO Box 31  
SYDNEY NSW 2001

Dear Mr McClellan AM KC

### **CONSULTATION PAPER: GOOD CHARACTER AT SENTENCING**

Thank you for the opportunity to meet with you and contribute to a roundtable discussion on good character in sentencing on 20 February 2025. The Law Society is grateful for the opportunity to provide a supplementary submission to the Sentencing Council in view of the issues discussed during the roundtable.

This submission provides targeted comments on the proposed repeal of section 21A(3)(f) *Crimes (Sentencing Procedure) Act 1999* (NSW) and is informed by the Law Society's Criminal Law and Children's Legal Issues Committees.

#### The Law Society's position

As noted in our first submission dated 14 February 2025 (*enclosed*), we do not support abolishing consideration of good character as a mitigating factor in all cases. In our view, repealing section 21A(3)(f) would undermine the integrity of the sentencing process and the capacity for courts to deliver individualised justice because it would remove an important factor considered by judicial officers in sentencing and, in our view, unduly constrain judicial discretion. We consider the common law to provide sufficient guidance to the appropriate weight, if any, that should be given to an offender's prior good character. The Law Society considers it critical that judicial officers be permitted to consider the full range of circumstances in criminal matters, so that individualised justice can be served and the community appropriately protected.

#### Addressing the concerns of victim-survivors

In developing reform to best address the concerns of victim-survivors in respect of sentence matters involving good character evidence, it would be beneficial to clarify whether it is the *form* or *substance* of good character evidence that is of concern.

If it is the *form* of the evidence, that is, the term "good character" and judicial findings about the defendant's "prior good character", then we suggest attention be directed to amending the terminology itself. As noted in our previous submission, we recognise that a judicial officer acknowledging an offender's "good character" in sentencing understandably may cause harm and distress to victim-survivors. We are cognisant that to consider the "good character" of, for example, a convicted child sex offender, appears to be an oxymoron that carries adverse inferences that are offensive and harmful to victim-survivors. If this is in fact the key issue, amending the terminology would, in our view, be an effective option to address victim-survivor concerns. We



would support consideration of changing the term “good character” to a more neutral, amoral term that better identifies the substance and utility of the evidence that typically falls into this category.

If it is the *substance* of good character evidence that is problematic, that is, the evidence put before the Court that constitutes ‘good character’, we are concerned that repealing section 21A(3)(f) would not address the concerns of victim-survivors. The proposed repeal of section 21A(3)(f) would not, in fact, preclude the Court from considering the evidence typically relied upon to establish prior good character in sentence proceedings where it bears upon the offender’s subjective case, past criminal record or prospects of rehabilitation. As such, it is conceivable, if not likely, that if the section were repealed, evidence such as community contributions and reputation, past meritorious conduct and references would remain part of the sentencing process and continue to cause distress for victim-survivors. We therefore suggest that a more effective way to improve victim-survivor experiences during the sentencing process is through other trauma-informed supportive measures (explored below).

We consider it particularly vital that procedural improvements are implemented, and effective support be available and accessible to victim-survivors, as other essential aspects of the sentencing process may remain distressing and traumatic for victim-survivors, regardless of reform to section 21A(3)(f). We note that the sentencing process is inherently and necessarily offender-centric, involving close consideration of a variety of relevant factors beyond the offence itself that may be distressing to victim-survivors, such as evidence about the offender’s upbringing, mental health or expressions of remorse. Such evidence is critical to ensuring individualised justice is delivered, and to ensure that sentences are appropriately responsive to the unique criminogenic factors of each offender. This is important from a punishment as well as community safety perspective, and accounts for the diverse range of sentences that may be imposed for the same offence. It is our view that in preserving the essential aspects of the sentencing process and delivering individualised justice, victim-survivors must be properly supported and justice delivered in a trauma-informed manner.

### Procedural improvements

In addition to the suggestions in our previous submission, we also consider that, to ensure law reform improves victim-survivor experiences of the criminal justice system, reform must be guided by recent consultative studies, such as the recommendations in the ALRC’s recent report *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*.<sup>1</sup>

We reiterate that sentencing procedure could be improved by judicial officers receiving trauma-informed training to ensure the sentence hearing and delivery of judgment is conducted so as to minimise the re-traumatisation of victim-survivors. We also support the availability of measures to reduce victim-survivor distress, such as Witness Assistance Service Officers and the improvement of court facilities to enable victim-survivors to attend sentencing proceedings via video link.

We thank the Sentencing Council for the opportunity to engage in roundtable discussions and to provide this supplementary submission. The Law Society remains available to assist in further consultations. Questions at

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<sup>1</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (January 2025, ALRC Report 143).



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first instance may be directed to Jade Fodera, Policy Lawyer, at

or

Yours sincerely,

**Jennifer Ball**

President

Attachment