

Hon Peter McClellan AM KC  
Chairperson  
NSW Sentencing Council  
GPO Box 31  
Sydney NSW 2001

By email: [sentencingcouncil@dcj.nsw.gov.au](mailto:sentencingcouncil@dcj.nsw.gov.au)

Dear Mr McClellan,

**Submission: *Consideration of Character References In Sentencing***

I am writing in relation to the to the NSW Sentencing Council's current review of the operation of section 21A(5A) and other relevant sections of the *Crimes (Sentencing Procedure) Act 1999* (NSW) and the common law that relate to the use of "good character" in sentencing, and in particular, the application of those provisions in relation to offences involving the sexual abuse of children.

I am an independent practice and policy consultant with over 25 years' experience in operational, clinical, strategic and executive roles across the spectrum of human services policy and practice areas, including child protection, out of home care, youth justice, disability services, aged care, and social housing services. Over that time, I have worked extensively with survivors of child sexual abuse and have come to understand the dynamics of abuse, including the methods and behaviours employed by perpetrators to enable sexual offending against children.

I support the previous preliminary submissions (PCG34) of Harrison James (Co-Founder, *Your Reference Ain't Relevant* Campaign) in their entirety.

Bluntly, the consideration of 'good character' references in the context of sentencing for convicted child sex offenders is an absurdity.

Child sex offences *always* involve a deliberate abuse of power and betrayal of trust, and evidence clearly demonstrates that offending of this nature frequently involves an intentional pattern of grooming behaviour, in which apparent 'good character' is exploited by the perpetrator to gain and maintain access to their victim(s) and enable the offences to occur covertly. There is no degree of countervailing 'good' behaviour that can be sufficient to erase the stain of that abuse and betrayal in any way relevant for the purposes of sentencing.

The mere fact that our justice system currently makes room for consideration of 'good character' in relation to child sexual offences reinforces community misconceptions about the nature of child sexual abuse, who perpetrates it and how. Further, consideration of purported

'good character' as a mitigating factor compounds the harm of the acts themselves, the harms that are a byproduct of victims' experiences in criminal justice processes, and the lifelong implications for victims.

It is encouraging to see that the current, well-documented evidence regarding the significant, lifelong impact of child sexual abuse and the secondary harms frequently inflicted upon victims in the course of criminal justice responses, is acknowledged and considered in the NSW Sentencing Council's Consultation Paper, *Good Character at Sentencing* (December 2024), at pp. 34-47.

In relation to the specific questions for consideration by the NSW Sentencing Council in its review of these matters, I offer the following submissions:

- (1) Consideration of 'good character' should be abolished in all cases involving child sexual offence because:
  - a. A person cannot be of 'good character' *and* sexually offend against children; it is a paradoxical concept.
  - b. Where a veneer of 'good character' exists in these matters, it is frequently the very mechanism by which perpetrators of child sexual offence gain, maintain and leverage access to and control over their victims in order to offend.
  - c. The mere consideration of 'good character' in relation to sentencing of convicted child sex offenders inflicts further harm upon their victims.
- (2) Consideration of lack of previous convictions should be abolished as a mitigating factor in all cases because:
  - a. The absence of evidence of prior offending is not evidence of absence; criminological and sociological research concerning the prevalence of child sexual abuse clearly indicates that:
    - i. the covert nature of child sexual abuse, together with
    - ii. the intentional grooming and coercion of victims in the course of offending in order to prevent disclosure or discovery of the offending behaviour,
    - iii. the impact of shame, fear and coercion of victims, as a result of the offending behaviour and grooming strategies employed by perpetrators in order to enable it; and
    - iv. problematic social and justice responses to the disclosures of child sexual abuse,

all impact on disclosure, prosecution and conviction rates, making the absence of conviction an unreliable bellwether for the existence of prior offending behaviour.

- b. Sentencing procedures currently allow for the consideration of prior convictions to as an aggravating factor, which provides sufficient latitude for the imposition of appropriate sentencing options for offenders with a proven history of offending.
- (3) If the Court has been satisfied to the criminal standard of proof that an offence has occurred, the fact of the convicted offender having denied the offences should be irrelevant in the context of considering purported 'good character' in sentencing.
- (4) As noted above, child sexual offences frequently involve an intentional pattern of grooming behaviour, in which apparent 'good character' is exploited by the perpetrator to gain and maintain access to their victim(s) and enable offending without detection. In this context, it would be appropriate for the Court to consider the exploitation of apparent 'good character' in the course of offending as an aggravating factor.

While my submissions deal primarily with the consideration of purported 'good character' in relation to sentencing for child sexual offences, the rationale for the abolition of consideration of 'good character' as a mitigating factor would hold for offences involving other vulnerable persons (as outlined in pp. 77-78 of the Consultation Paper) and offences for domestic violence related offences (pp 79-80).

Thank you for the opportunity to provide a submission for the NSW Sentencing Council's consideration in this important review. If you have any questions in relation to this letter or the submissions outlined within it, I would be pleased to offer any further advice or information that the Council may require.

Yours sincerely,

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18 January 2025