

11 February 2025

IGFF is proud to support the *Your Reference Ain't Relevant* campaign of our 2024 National Survivors' Day Ambassador [Harrison James](#) and provides support to his endeavours to achieve reform.

1. **Use of good character generally**
 - 1.1. **Should consideration of good character as a mitigating factor be abolished in all cases? Why or why not?**
 - 1.2. **How could consideration of evidence of good character be limited?**

It is the position of IGFF and National Survivors' Day that good character references should be abolished, particularly as it pertains to cases of sexual abuse and/or domestic and family violence committed by a person over 18.

Our response should be understood as focusing solely on good character references provided both in trial and during sentencing in matters of sexual abuse and/or family violence.

The nature of such interpersonal abuse is both horrific and life-altering for victim-survivors, with the consequences of such experiences becoming a lifelong burden the victim-survivor carries with them. Further, in our experience, the ramifications of such interpersonal violence are seldom carried only by the primary victim. Instead, the harm caused by this often extends to immediate family, including parents, children, siblings and spouses. The life-long impacts of such abuse are well documented, and **IGFF** has previously

written extensively on such matters, with our most recent submissions accessible upon request.

Given the absence of victim-survivor legal representation (although we note efforts underway to remedy this and other barriers to victim-survivor participation) and the already traumatic nature of the criminal justice process on victim-survivors, good character references that reinforce a lack of criminal history, or criminal history of this type, are considered particularly problematic. The approximately 25-year delay we see in reporting offences such as child sexual abuse would make this emphasis both inappropriate and inaccurate in our experience.

Where such prosecutions involve cases of institutional abuse, abuse has been found to be often more prevalent, serialised (including by more than one offender) and more severe (Blakemore, Herbert, Arney and Parkinson 2017). It is common for our clients to disclose multiple instances of reporting their abuse to the organisation for years before engaging with the justice system and for them to disclose the fear of not being believed again (or punished for their disclosure) as the predominant reasoning behind their delay.

We also note here the problematic use of “letters of reference” provided by organisations where such reports of abuse were made to the organisation, which then facilitated an alleged offender to move on to other organisations where they were in contact with children. Alternatively, such “letters of reference” may have been provided to an individual for entirely separate purposes and prior to criminal proceedings occurring. Yet, as demonstrated in the case of Joffre Archer these “letters of reference” are often then utilised as demonstrations of good character without the assent or knowledge of the character referee.

Likewise, for these types of offending, the offender's perception of “good

character” has often enabled the offending and played a significant role in delaying reporting. The *Royal Commission into Institutional Child Sexual Abuse* (2017, 299) found that

In many cases of institutional child sexual abuse that we have considered, it is clear that the perpetrator's good character and reputation facilitated the offending. In some cases, it enabled them to continue to offend despite complaints or allegations being made.

Further, Frieberg (2016, 52) posits that “character can be an aggravating factor if victims, their families and others have been led to trust the defendant because of the person's impeccable background, or where the person's ostensible good character has assisted in the commission of the offence” with a report tendered to the *Royal Commission into Institutional Child Sexual Abuse* (Freiberg, Donnelly and Gelb 2015) expanding upon this

Partly that is because it lamentably is all too common for the perpetrators of these offences to be men who in other respects have led exemplary lives and have commanded the respect of others. Partly, also, it is because the very veneer of respectability affords in crimes of this type the cover which conceals them. Indeed on occasions, ... the offender uses the public disgrace and humiliation which would follow from an exposure of his wrongdoing as a weapon to deter the victim from making that disclosure.

Whilst there are many cases in which **IGFF** clients have sat through the inclusion of good character references we have equally observed the inability of victim-survivors to represent their own credibility and/or have such supportive character references provided unchallenged on their behalf. Thus, there is a real perception of a “double standard” in relation to character references – here, in particular, we note the experience of our clients who, in

order to provide a victim impact statement, must undertake a statutory declaration which is absent in the provision of character references. A further example of the 'double standard' is the use of character evidence by defence wherein an

“accused may call evidence of good character as an exception to the credibility rule. Such evidence may be used to bolster the accused's credibility, and also in relation to the issue of whether he is guilty of the offence charged. However, the prosecution cannot call evidence of the complainant's good character to demonstrate that she is unlikely to manufacture allegations of sexual assault (Weston-Scheuber 2011, 12).

Further without the introduction of specialist sexual violence courts and training for officers of these courts **IGFF** does not believe that reliance on judicial discretion is sufficient to counteract or minimise the further harm experienced by victim-survivors exposed to good character references. This includes the role of good character evidence in assisting judicial officers to meaningfully assess other factors relevant to sentence, such as the offender's prospects of rehabilitation and likelihood of re-offending, given the high rates of systematic offending our clients experience and the likelihood of as yet undisclosed and repeated patterns of offending. Instead **IGFF** is far more supportive of the assertion that the perception of good character lends itself to considerable power and authority over victim-survivors, results in disbelief of children making disclosures and delays rates of disclosures amongst adults. As Krasnostein (Sentencing Advisory Council 2016, 43) observes

In cases of sexual penetration with a child under 12, it appeared that considerably greater weight was given to mitigating factors that were personal to the offender, such as prior good character or the burden that imprisonment would impose, than to aggravating

factors based on harm to the victim.¹

Whilst **IGFF** strongly supports the abolition of good character references, we recognise that this may not be adopted. If abolition is not achieved, then **IGFF** is supportive of the amendments put forward in 2024 in Ireland, under the Sexual Offences and Human Trafficking Act 2023. Previously, written character references could be provided without being sworn. This act requires good character references be made via oath or affidavit, ensuring the reference is contemporaneous and sworn as truthful and opening up the character reference to cross-examination (Browne 2023).

Here, the Department of Justice outlined that character reference letters “*will no longer be able to be read out in court unchallenged*” (McEntee 2023) closing what for many had been a significant factor of re-traumatisation in sexual assault cases. Rachel Morrogh (2024), Chief Executive of Dublin Rape Crisis Centre, stated, “*We know that positive character references can be extremely re-traumatising for victims who have already endured a difficult legal process ... This legislation represents a significant step toward ensuring our courts are more victim-centered.*”

2. Use of lack of previous convictions generally

2.1. Should consideration of lack of previous convictions also be abolished as a mitigating factor in all cases? Why or why not?

¹ This approach to mitigating and aggravating factors can be contrasted to public opinion research that shows that jurors and lay opinion place more weight on aggravating than mitigating factors. See Warner et al. (under review for publication), above n 61; Julian V. Roberts and Mike Hough, ‘Exploring Public Attitudes to Sentencing Factors in England and Wales’, in Julian V Roberts (ed.), *Mitigation and Aggravation at Sentencing* (2011).

2.2. In what circumstances should the fact that the offender does not have a record of previous convictions not be used in mitigation?

As noted earlier, the average length of time it takes for victim-survivors to make a disclosure is of such a length, and the barriers and re-traumatisation present in accessing criminal justice processes are such that a lack of previous convictions should not be relied on as a mitigating factor. Here, in particular, we reference the common experience of our clients where offenders cast doubt on the believability of their victims based on their own “good standing” and “high profile” within the community. Indeed, **IGFF** has significant experience of high-profile alleged offenders who have attracted significant and often highly publicised support through other high profile individuals in the media and social media long before matters reach trial.

Often, this support not only asserts the inconceivability of the offender's alleged conduct but also reinforces the likelihood of the victim-survivor being utterly mistaken (See public commentary surrounding high profile people and institutions such as ██████████, now deceased Cardinal George Pell, Stephen McLaughlin and Boys Town). This tends to be compounded when character references are provided by particularly high-profile individuals such as Prime Minister Joh Howard in the case of George Pell. Unfortunately, the natural experience of victim-survivors in the face of such circumstances is further detrimental to their mental and physical health, often adding additional barriers to disclosure and reporting. In our experience, no victim-survivor has ever adequately been able to provide evidence supporting their own good character, nor have they access the same high-profile people to provide character references with the ensuing result being an inevitable reinforcement of their lack of control and the power imbalance at play in such matters of

abuse.

3. Under what conditions could good character not be available as a mitigating factor for offenders who plead not guilty?

IGFF strongly asserts that character references should not be available as a mitigating factor. If the abolition of character references is not considered, we refer to our earlier statements on a proposed alternative.

4. Under what conditions could use of good character in the commission of an offence be treated as an aggravating factor?

Again, should our recommendations under question 1 not be implemented and the use of the Special Rule not be extended, **IGFF** would support the presumption that in matters of sexual abuse and domestic and family violence, the perception of good character should always be treated as an aggravating factor. In part because the repeated commissioning of offences such as institutional child abuse and family violence are enabled by perceived good character and in part because this good character results from the delegation of power and authority over others, **IGFF** proposes that the perception of good character in the commissioning of sexual assaults and family violence should always be treated as an aggravating factor.

5. Extending the special rule to all child sexual offences

5.1. Should the special rule be extended to all child sexual offences? Why or why not?

5.2. What offences, if any, should be added to the definition of “child sexual offences” for the purposes of the special rule?

If none of the earlier considerations is adopted, then **IGFF** would support the extension of the Special Rule to all sexually based offences and cases of

domestic and family violence. At a minimum, we support the proposed amendment to s 21A(5A) in the consultation paper.

We would recommend that coercive control be added as a definition to child sexual offences, sexual assaults and domestic and family violence offences. We acknowledge the existing NSW legislation, *The Crimes Legislation Amendment (Coercive Control) Act 2022*, and the definitions it provides as suitable. We would also propose that further consideration be given to the understanding of social media usage in the commissioning of such crimes, as we have observed the increasing reporting of usage of service carriers in cases of sexual offending in recent years. As aggravating factors, we would encourage more significant consideration of behaviours such as bullying, neglect, and physical or cultural violence. Where the matter involves abuse in an organisational context, appropriate consideration should be given to organisational culture as an aggravating factor.

6. Extending the special rule to sexual offences against other vulnerable groups

- 6.1. What other vulnerable groups or offences against vulnerable groups could be subject to the special rule?**
- 6.2. How could they be identified?**
- 6.3. Should any of these offences be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of the offence?**

We refer to our earlier comments under question 5 regarding the extension of the Special Rule. If this is not possible, then we recommend that inherently vulnerable groups could be identified through an assessment of victimology in sexual abuse and domestic and family violence cases. Further information may

be gathered from consultation with the National Redress Scheme concerning the treatment of extreme circumstances in assessing outcomes. However, **IGFF** specifically recognises the following factors as playing a role in vulnerability:

- **Cognitive and physical disadvantages**
- **Children aged under 17**
- **Circumstances of care (i.e. foster, ward or kinship care) and guardianship orders**
- **Good standing and profile of the offender**
- **Familial offending**
- **Domestic and family violence**
- **Adult sexual offences**
- **Elderly persons**

Although this list is by no means exhaustive, we strongly recommend that all of the above scenarios be subject to the condition that good character and a lack of previous conviction assisted in the commission of the offence.

7. Extending the special rule to adult sexual offences

- 7.1. What adult sexual offences, if any, should be subject to the special rule?**
- 7.2. Should any of these offences be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of the offence?**

It is our position that all sexual offences are both serious and egregious. We do not believe that there should be separate treatment for victim-survivors based on age or whether the violence was encountered in an intimate partner relationship.

8. Extending the special rule to domestic violence offences

- 8.1. Should domestic violence offences be subject to the special rule? Why or why not?**
- 8.2. Should these offences be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of the offence?**

Here, we support the position of Women's Safety NSW and the consultation papers consideration of the special rule being applicable in such circumstances. It is entirely consistent with our experience that perpetrators of domestic and family violence *"often present as "good guys" and positive contributors to the community even whilst perpetrating violence and abuse behind closed doors at home. This can in fact serve as a barrier for women and children seeking safety and support as friends, family members and community may not believe them when they disclose the violence and abuse they are experiencing"* and we endorse this section of Women's Safety NSW's submission.

- 9. Extending the special rule to other serious offences**
 - 9.1. What other serious offences, if any, should be subject to the special rule?**
 - 9.2. Should any of these offences be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of the offence?**

Noting the specialist scope of our service provision, we make no particular comment in relation to this.

- 10. Extending the special rule where there is a breach of trust or authority**
 - 10.1. What offences, if any, involving breach of trust or authority should be subject to the special rule?**

Offences where the alleged offender held perceived positions of trust or authority, at the time of the offence, should, at a minimum, be subject to the Special Rule. It is our experience and observation that positions of trust and authority are often exploited in the commissioning of offences involving organisational sexual assault. Further, it is our experience that these positions play a significant role in dissuading victim-survivors from disclosing and often delay the discovery of patterns of serial offending in this context. We note in Victoria, there is a specific provision for the charge of *Sexual Assault of a Child aged 16 or 17 under Care, Supervision or Authority*. This is set out in section 49E of the *Crimes Act 1958* and we recommend consideration of this as an aggravating factor for information purposes here.

10.2. Should any of these offences be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of the offence?

Noting IGFF's scope of practice, we are broadly supportive of expanding the special rule to all offences, particularly where good character can be considered an aggravating factor in the commission of the offence.

10.3. Should a finding that an offender abused a position of trust or authority in relation to the victim of the offence make the offender subject to the special rule? Why or why not?

We refer to our opinion under section 10.1 of this submission.

11. Extending the special rule to all offences

11.1. Should all offences be subject to the special rule? Why or why not?

11.2. If yes, should the special rule be subject to the condition that the offender's good character or lack of previous convictions was of assistance in the commission of any or all offences?

Noting the specialist scope of our service provision, we make no particular comment in relation to this.

12. Exempting under 18-year-olds from the special rule

12.1. Under what conditions should offenders who are under 18 be exempt from the application of the special rule?

Although our experience of supporting victim-survivors impacted by peer-on-peer abuse is less extensive, we are supportive of the consultation paper proposal that offenders under the age of eighteen require separate consideration. Further, additional consideration and support should be given to rehabilitative factors in such cases.

13. Placing the evidential burden on offenders

13.1. In relation to what offences, if any, should the burden be placed on an offender, in a sentencing hearing, to establish that their good character did not assist in committing the offence?

We refer to our earlier comments in their entirety. In short, we would encourage the approach proposed in the Consultation Paper only if other approaches are deemed unmanageable.

Yours sincerely,

Clare Leaney

CEO

In Good Faith Foundation

About IGFF

In Good Faith Foundation is a national charity and support service providing advocacy services to individuals, families and communities impacted by institutional abuse for almost 30 years.

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