

From:
To: [sentencingcouncil](#)
Subject: Preliminary Submissions Good Character in Sentencing
Date: Thursday, 4 July 2024 12:33:01 PM

New South Wales Sentencing Council,

Thank you for undertaking the review of the operation of section 21A(5A) and other relevant sections of the Crimes (Sentencing Procedure) Act 1999 and the common law that relate to the use of "good character" in sentencing. This is an important review and I hope to see changes made to sentencing and processes around this topic throughout Australia. Below are my responses to the terms of references outlined for consideration:

• whether the limitations on the use of evidence concerning 'good character' or a lack of previous convictions in certain sentencing proceedings, as per s 21A(5A) of the Crimes (Sentencing Procedure) Act 1999, should be extended to all sentencing proceedings for child sexual offending by removing the requirement that the offender's good character or lack of previous convictions, "was of assistance to the offender in the commission of the offence";

Good character should not form part of sentencing around any crime but particularly those related to sexual assault and child sexual offences. If you are found guilty of the crime of sexual assault, you are simply not of good character. You are a convicted child sexual assault perpetrator. Many perpetrators are not held to account for prior crimes, but that doesn't mean that the case being heard is their first offence. We know that many perpetrators of child sexual assault increase the nature of their crime over a period of time. Prior convictions should be used, but the lack of prior convictions should not.

• the operation of good character as a mitigating factor in sentence proceedings in general, including the interaction between good character and other mitigating factors and the purposes of sentencing, the utility of good character evidence in sentence proceedings, and whether the use to which good character evidence is put in sentence proceedings remains appropriate, equitable, and fit for purpose;

It is inappropriate to use good character references or evidence of good character when considering sentencing due to the nature of the processes used to undertake such crimes. It would be akin to reducing a sentence for hacking or bank fraud due to high grades at university in computer sciences or accounting. Those perpetrating the crime use their social skills and standing to commit the crime.

The University of New South Wales has published a study of the world's largest child sexual abuse perpetration prevalence. It is the largest study of its kind ever undertaken globally, Identifying and understanding child sexual offending behaviour and attitudes among Australian men, measures the prevalence of risk behaviours and attitudes regarding child sexual offending men. The conclusion of the report states "The report validates the observations of countless survivors, that the men who abused them are well respected members of the community who enjoy high esteem and the confidence of those around them." These perpetrators have used their "good character" to commit the crime and they should not be able to use it to reduce their sentence.

The UNSW study also indicated that "Well connected and relatively wealthy. They had better on average social supports and relationships. They were 1.63 times more likely to be married and had 1.18 times greater overall social support scores, than men who did not have sexual feelings or offending with children. They are more likely to be high income, Men who had sexual feelings and offending with children are two times more likely to have an annual household income greater than \$150,000. More likely to be working with children This group had 2.73 greater odds of working with children compared to men who did not have sexual feelings or offending with children."

The people perpetrating these times of crimes have money, power, social standing and the ability to obtain reference, moreso than those who do not offend. It is inappropriate to allow them to use these social advantages to reduce their sentencing and consequence.

the experience of victim-survivors in all sentencing proceedings involving the admission of evidence of good character and whether there are any legislative or other changes that could be made to improve their experience;

It is an incredibly difficult undertaking to even raise the awareness of the crime of sexual assault, and particularly for the children who are victims. This is made difficult by the false representation that the perpetrator holds some higher standing or is a trusted member of society. If their case is prosecuted, they undertake even more hardship. At the end of the process, they are victorious in that their perpetrator is found guilty, only to be told once again that this is a good person, who should have their sentence reduced. Again, references and instruments of evidence around a convicted person have no place in sentencing.

I ask that the NSW Sentencing Council take the steps necessary to remove all use of Character references in sentencing. The lack of prior convictions should also be removed and only prior convictions be considered.

I would like to take this opportunity to thank the NSW Sentencing Council for their consideration of these matters and to recognise the tireless work of victim survivors Harrison James and Jared Grice and their work on the Your Reference Ain't Relevant Campaign. These references need to be removed and this advocacy has been vital in reaching this point.

[* UNSW STUDY](#)

Sincerely,