



MayaKosha
Healing

**Submission to Sentencing Council around good character in
sentencing:**

Calling to remove good character references for paedophiles in the
sentencing procedures of child sexual abuse cases

Written by:

Alys McLennan

Founder and Principal Therapist of MayaKosha Healing

BSc (Psych), GradDip & M Soc Health & Counselling: AMHSW

Contents-

1. Summary.....	p3
2. About the Service.....	p3
3. Introduction.....	p4
4. Terms of reference.....	p6
5. Key issues.....	p7
6. Recommendations.....	p9
7. References.....	p12

Summary-

Thank you for the opportunity to provide a submission for the review of section 21A(5A) of the Crimes (Sentencing Procedure) Act 1999 (NSW), and other relevant sections, and the common law relating to the use of “good character” in sentencing. By allowing child sexual abuse offenders to use good character references in court proceedings, the grooming strategies of deception and manipulation employed to first access and cause harm to vulnerable persons is replicated in the court of law. This often results in reduced sentences and may be of further assistance to the offender to gain access to further children of whom they may commit offences against. It is therefore imperative to make reforms that increase safety and wellbeing of children, young people and families.

About the Service-

MayaKosha Healing is a trauma specific counselling service founded by Alys McLennan. Clients are mostly referred from Victims of Crime NSW, domestic violence services, child protection and out-of-home-care agencies and from individual vulnerable families. Alys is an accredited mental health social worker and a trauma specific child and family counsellor. She holds two Masters Degrees in addition to her undergraduate certifications. Alys’ therapeutic work focuses on promoting recovery from abuse, neglect, and crime as well as all forms of trauma, and grief. MayaKosha Healing provides services to vulnerable persons through the tailoring of specialised therapeutic interventions to individual needs founded upon frameworks including neurobiology of trauma, attachment, child development, family systems which are person centred and strengths-based in delivery.

Introduction-

Despite the significant and lifelong impacts as widely documented by trauma researchers child sexual abuse is still too common in Australian society (Briere, & Scott, 2006; Senn, Carey, & Vanable, 2008; Sharma-Patel, Brown, & Chaplin, 2012). The most recent data provided by The Australian Bureau of Statistics indicates that approximately 2.5 million Australian adults (13%) have experienced abuse during their childhood with 7.7 per cent of those adults reporting that they experienced childhood sexual abuse (ABS, 2019). Further to this, more recent data from the Australian Child Maltreatment Study indicates a higher rate of child sexual abuse finding 28.5% of Australians experienced child sexual abuse with girls reporting 37.3% and boys 18.8% (Mathews, Pacella, Scott, et al., 2023). As documented by the Australian Childhood Foundation and Monash University (Tucci & Mitchell, 2021), child abuse is widely tolerated due to misperceptions and misunderstandings by the wider Australian community.

Child sexual offenders use an array of perpetrator tactics that are pervasive in nature, which enable them access to children and families and gain power/ control. These perpetrator tactics (also commonly referred to as grooming behaviours) allow perpetrators to hide or mask their ill-intent and crimes for longer periods of time, resulting in the deferring or evasion of detection and conviction. Often the use of both positive engagement strategies and fear tactics ensures that victims are silenced, coerced or not believed around experiences of the harm activities (Crossins, 2009; Salter, 2004). Perpetrator behaviours may include (not limited to); secrecy contracting, gaining trust or making promises, engaging in play and child-led activities, gift giving, favouritism or financial remunerations, isolation tactics, engaging in employment or volunteering opportunities that provides them with good-standing, power or

easy child access, desensitising appropriate boundaries, coercive control behaviours (e.g. minimising, gaslighting, shifting blame), threats to self, the child or their loved ones, infiltrating specific or vulnerable families, or undermining safe parent-child relationships.

Outcomes on children, young people and families are extensive and often span years, if not decades or lifetimes. The impacts of child sexual abuse includes (not limited to): cognitive, emotional and social difficulties, education disruptions, increases in mood and mental health disorders, increased suicide ideation and suicide or self-harm attempts, safety cuing difficulties, attachment disruptions or risk and substance abuse/ misuse (Gilbert, 2007).

Despite this extensive research, the Australian community is still largely ambivalent towards trusting the disclosures of children about their experiences of child sexual abuse (Tucci & Mitchell, 2021). Therefore, the use of good-character references

- replicates grooming and abuse-exposure behaviours that was of assistance to the offender in the commission of their offences against children and families
- enables pedophiles to engage in further grooming behaviours
- adds to unhelpful societal narratives by increasing the mistrust of victim-survivor accounts
- adds to the risk of harm to children, young people and families
- silences and/or minimises victim-survivor experiences
- depletes the robust nature of the justice system in relation to child sexual abuse offences

Therefore, significant and meaningful reforms around section 21A(5A) of the Crimes (Sentencing *Procedure*) Act 1999 (NSW) is required and of the utmost importance to protect Australian community members.

Terms of reference-

This paper will aim to speak to the required terms of references as set out by the NSW Sentencing Council 2024.

1. 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”.
2. 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.
3. 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;
4. procedures for receiving good character evidence in sentencing proceedings; and
5. any other matter the Council considers relevant.

Key issues-

Early identification and intervention can play a key role in keeping children and young people safe and reducing the level of harm experienced by vulnerable persons. Unfortunately, this is difficult in child sexual abuse cases, due to the targeted use of grooming towards individuals, families and communities, as well as the lack of understanding about child sexual abuse and disclosures in the wider Australian society. Commonly employed perpetrator tactics enables crimes and harm to children/families to remain invisible for extended periods of time, and often result in non-reporting, unsupported disclosures or lack of physical evidence. The lack of previous convictions should therefore never be considered in sentencing and convictions around child sexual offending, nor should good character references, as it simply speaks to the perpetrator tactics (as opposed to integrity, truthfulness, positive standing, intent or character of the person).

The use of good character references to further reduce or dismiss charges, replicates perpetrator grooming tactics. Perpetrator grooming tactics ensures that victims are silenced or not believed, are too fearful or ashamed to speak out or report crimes, result in confusion about consent and if abuse has even occurred, and can often lead to mental health or behavioural issues that problematise the victim rather than lead to identifying the perpetrator (Salter, 2004). This can cause significant additional distress and harm to victim-survivors as they often report feeling that they were not believed, that the process minimised their experiences and can even result in experiences that justice system colluded with their abuse perpetrators. The positive presentation of perpetrators of child sex offenders simply means

that the masking of insidious intentions is upheld, grooming of juries can occur and further harm to victims-survivors occurs (Crossins, 2009; Salter, 2004).

The resulting trauma responses of victims-survivors such as nervous system activation responses, mental health diagnoses, feelings of anxiety and depression, use of drug and alcohol or other risk-taking behaviours, and memory or presence issues, can mean that the victim-survivors present as distressed, unreliable or untruthful in justice proceedings Briere, & Scott, 2006; Elzy, 2011; Messman- Moore, 2010; Senn, Carey, & Vanable, 2008; Sharma-Patel, Brown, & Chaplin, 2012). This is further exacerbated by frontline responses and court processes not being trauma informed or developmentally appropriate- further increasing vulnerability, re-traumatisation, and distress-activations (Crossins, 2009). Perpetrators on the other hand, are currently able to use the justice system to further oppress their victims financially, psychologically and emotionally, as they may present as more grounded, stable and supported. Further to this, in Australian society there are often discourses that children are less reliable in their accounts than adults (Crossins, 2009; Gallagher 2019; Tucci & Mitchell, 2021). Combining this with other factors such as grooming tactics of the child victim, grooming tactics of communities and adults around the child, accepted legal tricks (e.g. use of double negative questions to confuse victims on the stand) and significant misunderstandings about sexual abuse and disclosures from the Australian public, all create a major power disparity embedded into justice processes favouring perpetrators (Crossins, 2009; Tucci & Mitchell, 2021). This can even result in other child safe practices/organisations faltering from a knock-on effect, such as allowing predators to gain working with children checks which are granted based on a national criminal history record check and a review of reportable workplace misconduct (Service NSW, 2024). To allow good

character references of the perpetrators in addition to these identified power-over tactics only further adds to power, authority and harm capabilities, as well as lower conviction rates and reduced sentences that places individual, families and wider communities at further risk.

In having to bear witness to how a person can be a good person, despite the very violence and harm they caused, can feel minimising and at odds with experience, be humiliating, and ultimately be experienced as unjust and untruthful for victim-survivors. Further to this, due to the lack of understanding of sexual abuse, trauma responses and perpetrator tactics, jurors are often confused by the good character references which mitigates appropriate sentencing and conviction rates. Thus, it leads to reduced sentences and non-convictions that place further children and families at risk of harm. Overall good character references serve to deceive people and hide abuse, rather than to provide a fair and equitable justice process. Thus, in child sexual abuse cases, good character references are not fit for use, rather they are an extension of the grooming behaviours already employed that were of assistance in the original commissioning of the offences.

Recommendations-

Given the previous information discussed, it is therefore recommended that the NSW Sentencing Council undertakes changes to section 21A(5A) of the Crimes (Sentencing Procedure) Act 1999 (NSW), and other relevant sections, and the common law relating to the use of “good character” in sentencing by considering:

- the reduction of sentences based on good character references places Australian children and families at ongoing high risk of violence and abuse
- good-character references are an extension of the already well-researched perpetrator grooming tactics which are used to enable child sexual abuse crimes
- good-character references do not speak to the integrity or truthfulness of the perpetrators and are therefore not fit for use
- the use of good-character references reduces the robust nature of the justice process, by further adding to the already unhelpful and existing misunderstandings/ narratives present in Australian society around child sexual abuse, trauma responses, disclosures and presentations of victim-survivors
- non-convictions lead to working with children checks being authorised for persons who cause harm to children, resulting in individuals, families and whole communities being further groomed and/ or harmed.
- additional negative impacts are experienced by victim-survivors around witnessing good-character references of perpetrators of abuse
- good character references further impact safe-parent and child relationships by undermining, distorting or minimising their abuse experiences
- process changes and reviews should be undertaken with consultations of victim-survivors to ensure that rich data around lived experiences of violence is embedded into processes

If you would like to discuss any of the issues outlined in my submission further, please contact Alys McLennan of MayaKosha Healing

Yours sincerely,



Alys McLennan

Trauma-Specific Child & Family Counsellor and Accredited Mental Health Social Worker

5 July 2024

Reference list-

- Australian Bureau of Statistics (2019). Characteristics and outcomes of childhood abuse. Retrieved 4 July 2024 from <http://www.abs.gov.au/articles/characteristics-and-outcomes-childhood-abuse>
- Briere, J. & Scott, C. (2006). *Principles of trauma therapy: A guide to symptoms, evaluation and treatment*. California: Sage Publications.
- Crossins, A. (2009). Cross-examination in child sexual assault trials: evidentiary safeguard or an opportunity to confuse? *Melbourne University Law Review*. 33(1):68-104.
Retrieved from
https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1705316/33_1_3.pdf
- Elzy, M.B., (2011). Examining the relationship between childhood sexual abuse and borderline personality disorder: Does social support matter? *Journal of Child Sexual Abuse: Research, Treatment, & Program Innovations for Victims, Survivors, & Offenders*, 20, 284-304.
- Gallagher, M. (2019). Rethinking children's agency: Power, assemblages, freedom and materiality. *Sage Journals*.9 (3). Retrieved from
<https://doi.org/10.1177/2043610619860993>
- Gilbert, J. (2007). Risking a relation: Sex education and adolescent development. *Sex Education*, 7, 47-61.
- Lubit, R., Rovine, D., Defrancisci, L., & Eth, S. (2003). Impact of trauma on children. *Journal of Psychiatric Practice*, 9, 128-137.
- Mathews, Pacella, Scott, et al., (2023). Prevalence of child sexual abuse. Retrieved on 4 July 2024 from <https://bravehearts.org.au/research-lobbying/stats-facts/prevalance-of-child-sexual-abuse/>
- Messman- Moore, T.L. (2010). Emotional dysregulation and risky sexual behaviour in revictimization. *Child Abuse & Neglect*, 34, 967-976.
- Salter, A.C. (2004). *Predators: Pedophiles, Rapists, And Other Sex Offenders*. Basic Books.

- Senn, T.E., Carey, M.P., & Venable, P.A. (2008). Childhood and adolescent sexual abuse and subsequent sexual risk behaviour: Evidence from controlled studies, methodological critique, and suggestions for research. *Clinical Psychology Review*, 28, 711-735.
- Service NSW (2024). Apply for a working with children check. Retrieved on 5 July 2024 from <https://www.service.nsw.gov.au/transaction/apply-for-a-working-with-children-check>
- Sharma-Patel, K., Brown, E.J., & Chaplin, W.F. (2012). Emotional and cognitive processing in sexual assault survivors' narratives. *Journal of Aggression, Maltreatment & Trauma*, 21, 149-170.
- Tucci, J & Mitchell, J, (2021). Still Unseen and Ignored: Tracking Community Knowledge and Attitudes about Child Abuse and Child Protection in Australia. Retrieved on 4 July 2024 from: <https://www.childhood.org.au/app/uploads/2021/08/Still-unseen-and-ignored-report-FINAL-REPORT-17aug21.pdf>
- Tucci, J & Mitchell, J, (2021). Still Unseen and Ignored: Community Attitudes Infographic. Retrieved from https://www.childhood.org.au/app/uploads/2021/08/Community-Attitudes-Infographic-2pg.pdf?_gl=1*1hro77j*_gcl_au*MTAwNDEyMzU0NS4xNzIwMDc3MTAx*_ga*MTY3OTg5NjExLjE3MTU2NjM5MzE.*_ga_K8NSBD4MEG*MTcyMDA3NzEwMy4xLjAuMTcyMDA3NzEwMzE2MS42MC4wLjA.