

YourReference AintRelevant

**Submission to the NSW Sentencing Council's
Review of Good Character in Sentencing.**

This submission was prepared by Harrison James, Co-Founder of Your Reference Ain't Relevant with contributions from Emily Dale, Lawyer and Head of Advocacy at Full Stop Australia. If you have any questions in relation to this submission, please do not hesitate to contact Harrison directly, at

Dear Mr. McClellan and the NSW Sentencing Council,

I am writing to provide my input and perspective on 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. As a survivor of child sexual abuse, a passionate activist for the prevention of child sexual abuse, and the co-founder of the **‘Your Reference Ain't Relevant’ Campaign** (the campaign), which has garnered significant media attention, triggered this review in New South Wales, as well as another in the Australian Capital Territory and was an agenda item for July’s Standing Council of Attorneys General meeting; I believe it is imperative to ensure that our sentencing framework adequately reflects the seriousness of these offences and holds perpetrators accountable.

Firstly, I’d like to commend the team at the NSW Sentencing Council and the NSW Attorney-General Michael Daley, for undertaking this important review in light of the concerning prevalence of child sexual abuse within our society. The impact of these offences on victims and their families cannot be overstated, and it is crucial that our criminal justice system provides an effective response to address, prevent, and deter such harm. The prevalence of sexual violence, particularly against children, remains a significant concern across Australia, and despite legislative reforms and increased awareness, there is a persistent gap between community expectations and sentencing outcomes for sexual violence offences. Victim-Survivors of these devastating crimes should not have to choose between their own well-being and the pursuit of justice, and my campaign’s mission is to ensure they can have both.

In reviewing sentencing practices for child sexual abuse offences, it is essential to consider the perspectives and experiences of survivors like myself, as well as the broader community's expectations regarding appropriate penalties. The existing penalties imposed must be assessed to ensure they align with community views and sentencing principles of just punishment, denunciation, and community protection. Additionally, any trends or anomalies in sentencing practices should be identified and addressed to promote consistency and fairness in the sentencing process. Also, the law should serve not only as a means of punishment but also as an educational instrument for society.

A particular concern for the campaign is the operation of good character references for convicted child sex offenders in the sentencing procedure of the court process. We believe this warrants careful examination. While this provision aims to provide a holistic view of the offender, it is crucial to ensure that factors such as good character are not considered for cases pertaining to child sex offences. By implementing NSW Legislation to explicitly state that good character should not be considered for convicted child sex offenders, we can prevent the minimisation of the seriousness of the offences and prioritise the protection and well-being of victims above all else.

One of the key concerns highlighted by the campaign revolves around the provision of good character references for convicted child sex offenders during the sentencing process, particularly the operation of Section 21A (5A) of the Crimes Act 1999 (the provision). While character references serve the noble purpose of offering insight into an offender's background, they inadvertently diminish the gravity of the offences and undermine the pursuit of justice. In cases of child sexual abuse, offenders may exploit their standing in the community to groom victims and gain access to vulnerable individuals. Good character references, often provided by well-meaning acquaintances who remain unaware of the offender's predatory behaviour, contribute to perpetuating harmful stereotypes and misconceptions about perpetrators. These references present offenders in a favourable light, overshadowing the true nature of their crimes and hindering the pursuit of justice for victims.

In New South Wales, the current provision creates an arbitrary distinction where only certain perpetrators, such as individuals with obvious standing in the community like teachers, scout masters, or religious leaders, are prohibited from using good character references. However, perpetrators like step-parents, siblings, or neighbours – who may not have outwardly used their good standing to facilitate the offence – are still well within their rights to employ such references. This discrepancy underscores the inconsistency and inadequacy of the existing system. We understand that the current legislation was not originally intended to be interpreted this way; rather, it is the interpretation of practising legal professionals. The supporters and the team at the campaign argue that all convicted child sex offenders must be held accountable for their actions, regardless of their perceived 'good character,' as this so-called character was, in fact, utilised in committing these heinous crimes.

By downplaying the severity of the offences, good character references can impede the sentencing process and undermine the interests of justice. To address this critical issue, we propose the removal of the provision allowing good character references for convicted child sex offenders in the sentencing procedure. This reform is aligned with broader objectives aimed at enhancing the accountability of offenders, prioritising victim safety, and bolstering public confidence in the justice system. Eliminating the option for good character references ensures that offenders are held fully accountable for their actions and that the severity of their offences is not minimised or obscured. It sends a clear message that society does not tolerate or condone such heinous crimes and reaffirms the commitment to prioritising the protection and well-being of victims, and children above all else. By implementing this reform, New South Wales can lead the nation to take a significant step forward in creating a justice system that is truly responsive to the needs of victims and committed to holding perpetrators accountable for their actions.

Legislation that clarifies character references can never be considered as a mitigating factor for child sex offences would establish a more consistent approach to sentencing, recognising the insidious role played by all offenders' reputations in enabling them to access their victims, whether directly or indirectly. The current laws across the country adversely affect the experiences of Victim-Survivors within the justice system.

Furthermore, in cases where character is used to mitigate an offender's sentence, two of victim-survivors' fundamental justice needs - validation and vindication - are often left unsatisfied. The Victorian Law Reform Commission (VLRC), in its report on Improving the Justice System Response to Sexual Offences, defines these needs as follows:

- Validation entails ensuring that victim-survivors' stories are believed, not just heard, and that they are treated with empathy for the injustice they have endured. The justice system holds a special and esteemed position in acknowledging the harm experienced by victim-survivors.

- Vindication involves an unequivocal condemnation of the offence and ensures that those responsible face consequences. It requires a response from the community or the law that denounces the violence and stands with the victim. This includes the punishment of the person responsible for the violence. Perpetrators must be held accountable, facing consequences for their actions, undergoing treatment, accepting responsibility for their actions, and making amends.

When "good character" is used to mitigate sentencing, victims often experience re-traumatisation, distress, and disappointment with the justice system. Even, ***The Royal Commission into Institutional Responses to Child Sexual Abuse***, as lead by Mr. McClellan, reported that victims were often distressed when they heard evidence of an offender's good character, resulting in emotional harm. The reality we face is that all sexual abusers of children rely on grooming not only the children they abuse, but the families around them. To presume that the good deeds or integrity they may have shown in other areas of life in any way diminishes the crime is a very apparent injustice. Child sexual abuse is a crime against nature, that is unequivocally in a class of its own. It is not a misdemeanour. Being convicted of a crime such as this, is clear evidence of a lack of good character. No offender receives a life sentence but their victims do.

A child sex offender's so-called "good character" is further evidence of the grooming process and should be treated accordingly in sentencing. This underlines the urgency of amending the current legislation across states and territories to ensure that the justice system provides validation and vindication for victim-survivors and operates in a manner that is both just and empathetic.

Child sexual abuse stands as a crime incomparable to any other, inflicting deep emotional and psychological wounds that can endure a lifetime. Recent findings from the ***Australian Child Maltreatment Study*** in April of this year reveal the staggering reality that child sexual abuse affects an alarming 28.5% of our population – 1 in 3 girls and 1 in 5 boys. As a survivor of child sexual abuse myself, I can confirm these statistics are nothing short of harrowing. This is a crime that strikes at the very heart of our society, hiding in plain sight and undermining trust, security, and innocence. For survivors, this journey is one of resilience and recovery, a path that demands justice and understanding from society. Within our campaign, we address a legal provision that has long troubled survivors and advocates. Across states and territories, the current legislation presents significant challenges in the pursuit of justice for victims of child sexual abuse. Although unintended, in its current form, this provision obstructs the comprehensive acknowledgment of the heinous nature of these crimes and, in doing so, undermines the healing process for survivors. We firmly believe that the current legislation creates a troubling double standard in legal outcomes. We assert that the removal of these words is an imperative step towards establishing a uniform rule: that not one individual convicted of child sexual abuse, regardless of their outward good

standing, may use good character references or lack of previous convictions to mitigate their sentence.

Our aim is for the courtroom to understand that the 'good character' of all perpetrators of this crime is, in fact, a part of the crime, a tool of deception. No responsible parent or caregiver would entrust their child to someone they're suspicious of, and hence in order to achieve their goal of sexually abusing children, these offenders must present themselves as upstanding individuals who wouldn't harm a fly. It is a weapon in their extensive arsenal of deceit. Beyond the legal ramifications, the complete removal of good character reference provisions in child sexual abuse cases carries profound and transformative social consequences. Although this is one change amongst a plethora that could be implemented, this signifies a reckoning, that society, the NSW Government, and the justice system, will no longer tolerate child sexual abuse and sends an unwavering message of deterrence, that offenders will be held accountable without leniency based on character references.

In eliminating these provisions, we mark a significant stride towards fostering a culture of awareness and understanding. It enables survivors and our society as a whole to recognise the deep and enduring impact of child sexual abuse. It encourages survivors to come forward, secure in the knowledge that the legal system unwaveringly supports them and is dedicated to ensuring justice is served. This, for me personally, is the core of this change: to instil the confidence in survivors to step into the courtroom and seek justice, making them, the children who never asked for this to happen, the priority.

Furthermore, this change holds the potential to diminish the stigma surrounding child sexual abuse. By shifting the focus from the character references of the offender to the offence itself and its profound consequences, to which society can better acknowledge the experiences of survivors. Laws should reflect societal expectations, and this shift enables us to provide survivors with the support and validation they rightfully deserve.

The core issue surrounding the current legislation in each state and territory, lies in its unintentional creation of a dual standard when sentencing individuals convicted of child sexual abuse. We firmly assert that this disparity is not only unjust but also illogical. To address this matter more sensibly, it's imperative to universally prohibit the consideration of an offender's prior character when sentencing child sex offenders, acknowledging the distinctive nature of these crimes and alleviating a significant source of retraumatisation for countless victim-survivors. The seriousness, prevalence, and exceptional dynamics of child sexual abuse mandate that "good character" or "lack of previous convictions" should never play a mitigating role in sentencing. We hold a steadfast belief that the profound gravity, widespread occurrence, and unique dynamics of child sexual abuse demand that "good character" should never serve as a mitigating factor in sentencing.

Child sexual abuse represents a pervasive issue in our society. As stated above, the most recent Australian Child Maltreatment Study, a survey of 8,500 Australians aged 16-65+, indicates that 28.5% of respondents have endured child sexual abuse. The ramifications of such abuse are profound, encompassing not only the actual offences but also the grooming tactics employed by offenders, the silence and shame carried by victim-survivors, and the intricate dynamics that often exist between offenders and their victims.

Child sexual offences are unique in that:

- Perpetrators often exploit their seemingly positive reputations to commit heinous crimes behind closed doors.
- An individual's public reputation is largely unrelated to their likelihood of committing offences in private.

This distinctiveness renders the consideration of past character profoundly inappropriate in sentencing for all child sexual abuse cases. In every single case of child sexual abuse, an offender's public reputation is either irrelevant to their likelihood of committing offences or, in more disturbing instances, was weaponised to facilitate the offence.

A notable challenge the campaign has faced in advocating for the removal of good character references in the sentencing of child sexual offenders is the reluctance from some legal professionals who argue that such a change could have "unintended consequences." However, when pressed for specific examples of these consequences, they are unable to provide concrete instances. The only primary consequence I can foresee is that perpetrators of child sexual offences receive harsher sentences, which is by no means a negative outcome. Harsher sentences would appropriately reflect the gravity of these heinous crimes, provide a stronger deterrent, and validate the experiences and suffering of the victims. This reluctance seems to stem from a resistance to change rather than a substantive concern about the impacts of the proposed reform.

The principle behind character references in sentencing is to provide a holistic view of the offender, highlighting positive attributes that might mitigate the severity of their sentence. However, in the specific context of child sexual offences, this principle is fundamentally flawed. Offenders often use their perceived good character as a tool to gain trust and access to victims in all matters of child sexual offending regardless of outward 'good standing', making it a part of their criminal behaviour rather than a mitigating factor. Allowing character references in these cases diminishes the severity of the crimes and undermines the pursuit of justice. It sends a conflicting message that good deeds can somehow counterbalance the profound harm inflicted on victims. By eliminating the consideration of good character references in sentencing for child sexual offences, we ensure that the focus remains on the gravity of the crime and the impact on the victims, promoting a justice system that truly prioritises their protection and well-being.

While we acknowledge that the decision rests in your hands, I earnestly implore the NSW Sentencing Council, as well as the Attorney General, to consider and implement the proposal put forth by the campaign. Specifically, I advocate for deleting the last 21 words of the current provision, **'if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence'**, to ensure that good character references for convicted child sex offenders are not considered in the sentencing procedure of the court process. These references, often provided by members of the community who are unaware of the offender's true nature, can inadvertently minimise the seriousness of the offences and perpetuate harmful stereotypes about perpetrators. It is

essential to recognise that such references can serve as further evidence of the grooming process employed by perpetrators to gain trust and access to victims.

By allowing these references to be considered in sentencing, the court may overlook the true extent of the harm caused to victims and fail to hold offenders fully accountable for their actions. Amending this provision would send a clear message that society does not tolerate or condone such heinous crimes and prioritise the protection and well-being of victims above all else. Furthermore, the implementation of this proposal aligns with the broader goals of promoting public safety and preventing future instances of sexual violence.

By addressing systemic flaws in the sentencing process and ensuring that offenders are held to account without leniency based on irrelevant factors, we can work towards creating a justice system that truly serves and protects all members of our community.

Together, we can rectify a longstanding injustice, ensuring that the law aptly represents the complexity of child sexual abuse cases and the enduring impact on survivors' lives. In amending this legislation, we aspire to redefine the approach to sentencing in cases of child sexual abuse. Our goal is to foster a system that is equitable, compassionate, and genuinely just.

We eagerly anticipate a constructive and empathetic dialogue – one that centres on survivors' voices and upholds the principles of justice for all. We extend our gratitude to all who join us in this significant endeavour, as we together pave the path toward a more compassionate and equitable legal system.

We once again, thank the NSW Sentencing Council and the NSW Attorney General for undertaking this review and welcome the opportunity to contribute to the development of evidence-based and victim-focused sentencing practices. We urge the NSW Sentencing Council to consider our recommendations and take proactive steps to address the challenges identified in this submission.

Thank you for the opportunity to contribute to this review process. I am available to provide further information or clarification if needed.

With hope and determination,

Harrison James.

Co-Founder, Your Reference Ain't Relevant Campaign.

Attached below are the letters of support the 'Your Reference Ain't Relevant' Campaign has received for both New South Wales and the Australian Capital Territory from some of Australia's leading foundations and organisations dedicated to preventing child sexual abuse, the findings from the 2023 Australian Child Maltreatment Study that was consistently referenced throughout this submission, and finally a submission from Prue Gregory OAM.

Prevalence of child sexual abuse

Survey of **8500** Australians aged 16-65+

Overall national prevalence

of child sexual abuse in Australia:

28.5%



Almost 1 in 4 experienced 1 or more types of:
contact child sexual abuse



Almost 1 in 5 experienced:
non-contact child sexual abuse



8.7% of Australians experienced:
forced sex in childhood
(rape) 1 in 12



When a child experiences CSA, it rarely happens only once

Among children who experienced CSA

78%
experienced it more than
1 time

42%
experienced it more than
6 times

11%
experienced it more than
50 times

Child sexual abuse in Australia is widespread, enduring and intolerable.

Overall national prevalence breakdown by sex:

More than 1 in 3 girls experience:
child sexual abuse



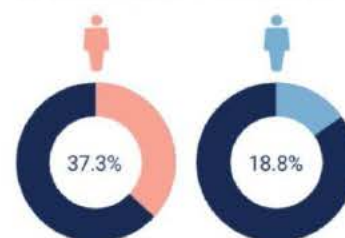
Almost 1 in 5 boys experience:
child sexual abuse



Massive gender disparity

Full sample (aged 16-65+):

Girls experience **double** the rate of **child sexual abuse** than boys



Youth sample (aged 16-24):

Girls experience **2.4 times** the rate of **child sexual abuse**



Mathews B et al. (2023) The prevalence of child maltreatment in Australia: findings from a national survey. Med J Aust. 218 (6).

For information about the ACMS and support services visit www.acms.au

