



NSW Sentencing Council

# **Good character in sentencing**

Preliminary Submission by the  
Older Women's Network NSW

## **Background of the Older Women's Network NSW**

The Older Women's Network New South Wales (OWN) is a community-based organisation that is run by older women, for older women. Established in 1987, OWN aims to promote the rights, dignity and wellbeing of older women. It is the peak body representing 20 groups in New South Wales, including in rural, regional areas. We encourage mutual support and friendship amongst our members and work to foster a positive attitude toward ageing. Members of our organisation are older women who have a strong interest in housing affordability, ending violence against women and ensuring economic wellbeing.

## **Perspectives on the Review of Good Character in Sentencing**

The Older Women's Network NSW believes that the use of good character references in the sentencing of convicted child sexual offenders and that of convicted sexual offenders must be eliminated so that the justice system can better focus on the severity of the crime, the impact on the victim, and the need for fair and consistent sentencing that serves the principles of justice and public confidence. These points are expanded below.

### **1. Undermines the Severity of the Crime**

The use of good character references in sentencing sexual assault offenders can severely undermine the gravity of the crime committed. When courts consider an offender's prior good behavior, achievements, or social contributions, it can create a misleading narrative that the offender's positive attributes somehow mitigate the harm they caused. This is particularly problematic in cases of sexual assault, where the impact on the victim is profound, enduring and life changing.

Sexual assault is a very serious crime that deeply violates the victim's autonomy, physical integrity, and psychological wellbeing. Allowing an offender's unrelated past good deeds to influence sentencing diminishes the perceived severity of this violation. It sends a message that an individual's positive contributions in other areas can offset the egregiousness of their actions, which is inherently unjust.

Character references should not be used to skew judicial outcomes, leading to sentences that do not reflect the serious nature of sexual assault.

When the focus is shifted from the crime to the character of the offender, the judicial system fails to hold the perpetrator fully accountable for their actions. This can erode the deterrent effect of sentencing, as potential offenders might perceive that their good behavior in other areas could protect them from the full consequences of their criminal actions.

## **2. Injustice to Victims**

The criminal justice system must prioritize the needs and experiences of victims, especially in cases of sexual assault, including the sexual assault of children. Allowing good character references to mitigate sentencing can create a strong sense of injustice among victims, who may rightly feel that their suffering is minimized and that the perpetrator is not being held fully accountable.

Victims of sexual assault endure significant trauma, and the judicial process should be a crucial part of their journey toward healing and closure. When offenders receive reduced sentences based on their good character, it can lead to the victims feeling marginalized and the invalidation of their trauma and suffering.

Such outcomes can deter victims from coming forward, fearing that their attackers may not face the full consequences of their crime. This perpetuates a cycle of silence and impunity, undermining efforts to combat sexual violence effectively. Ensuring that sentences reflect the crime's severity and the harm caused to the victim is essential for maintaining the integrity of the justice system and supporting victims in their recovery.

## **3. Potential for Bias**

Good character references often come from the offender's social circle, introducing a significant potential for bias. Friends, family members, and colleagues are likely to provide positive testimonies, painting the offender in the best possible light to show how 'out of character' the offending was. This narrative can unfairly influence the judge's perception and lead to more lenient sentencing, especially in cases involving influential or well-connected individuals.

Take the case of George Pell, whose character referees include John Howard, a former prime minister. Pell's defence lawyer said of Pell's referees: "These people love him; none of them believe he is capable of these offences."<sup>1</sup> This comment highlights the fact that perpetrators of child sexual assault, often present as upstanding citizens who have carefully shaped positive public opinion as a cover to their offending (also called 'environmental grooming').<sup>2</sup>

Bias in character references is particularly problematic in cases of sexual assault, where the offender's actions are diametrically opposed to the positive attributes being highlighted by their supporters. The reliance on these biased testimonies overshadows the gravity of their crime and the suffering of the victim, leading to unjust outcomes.

The judicial system must strive to ensure that sentencing is based on objective assessments of the crime and its impact, rather than subjective and potentially biased character references. Removing the consideration of good character references can

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<sup>1</sup> <https://www.theage.com.au/national/victoria/thoughtful-considerate-the-people-who-wrote-character-references-for-george-pell-revealed-20190227-p510pp.html>

<sup>2</sup> <https://kbsolutions.com/Grooming.pdf>

help eliminate this bias and ensure that sentences are based solely on the severity of the offense and the need for justice.

#### **4. Irrelevance to the Crime**

Good character in other areas of life does not ameliorate the fact that a very serious crime was committed. Achievements or past behavior unrelated to the offense should not influence sentencing for a specific criminal act which has caused significant trauma to the victim. The focus in sentencing should remain on the crime itself and its impact on the victim, rather than on the offender's prior good deeds or positive attributes.

In cases of sexual assault, the harm caused to the victim is profound, enduring and life changing. The crime itself, especially perpetrated on children, is a severe violation of the victim's autonomy and wellbeing, and this should be the only consideration in sentencing. Allowing good character references to mitigate sentencing shifts the focus away from the crime and its impact on the victim to how 'good' the perpetrator is.

#### **5. Deterrence and Public Confidence**

The justice system must ensure that sentences act as a deterrent to potential offenders and reflect the community's need for justice to be seen to be done. Lenient sentences influenced by character references can undermine these goals, leading to a loss of public confidence in the judicial system.

Sentences for sexual assault must be severe enough to deter potential offenders and more importantly, convey the message that such crimes are taken very seriously by the legal system. When good character references lead to reduced sentences, it creates the perception that the justice system is lenient on offenders, particularly those with social standing or influence.

Public confidence in the justice system is crucial for its legitimacy and effectiveness.

#### **6. Inconsistent Sentencing**

Allowing good character references can lead to inconsistent sentencing, where individuals with similar crimes receive different sentences based on their social standing or ability to gather supportive references. This undermines the principle of equality before the law, which is fundamental to a fair and just legal system.

Inconsistent sentencing is particularly problematic in cases of sexual assault, where the focus should be on the crime and its impact rather than the offender's social connections or past good behavior. When good character references are considered, individuals with greater social standing or influence may receive more lenient sentences, creating a disparity in the treatment of offenders.

For example, in the case of *R v. Lazarus* (2017), Luke Lazarus received a lenient sentence influenced by character references highlighting his good behavior and

contributions to the community. This outcome contrasted with other cases where offenders without such references received harsher sentences for similar crimes, highlighting the inconsistency in sentencing.

By eliminating the consideration of good character references, the judicial system can ensure that sentences are based solely on the severity of the offense and the need for justice, promoting equality before the law.

## **7. Victim-Survivor Experiences**

Victim-survivors often feel retraumatized when good character evidence is admitted, as it acts to minimize their suffering and the crime's impact. Legislative changes should focus on victim-survivor perspectives to ensure justice is seen to be done.

Victim-survivors of sexual assault already endure significant trauma, and the judicial process plays a crucial role in their healing journey. When offenders receive reduced sentences based on good character references, it can lead to feelings of invalidation of the trauma suffered by the victims, and further marginalization for the victims.

Ensuring that victim-survivor experiences are considered in the sentencing process is essential for delivering justice. By eliminating the consideration of good character references, the judicial system can prioritize the needs and perspectives of victims, ensuring that sentences better reflect the severity of the crime and its impact.

## **8. Historical and Systemic Biases**

Historical and systemic biases often mean that certain groups are more likely to have access to influential character references. This can perpetuate inequalities in sentencing and reinforce social disparities within the justice system.

Access to influential character references is often a privilege enjoyed by individuals with social standing, wealth, or connections. This access can create disparities in sentencing, where individuals from disadvantaged backgrounds receive harsher sentences compared to those with more resources and connections.

Sentencing should be based on the severity of the offense and the need for justice, rather than the offender's social standing and ability to access character references from individuals who are seen to be of 'good standing'. Eliminating the consideration of good character references can help promote equality before the law and ensure that sentences reflect the gravity of the crime.

## **9. Focus on the Crime's Impact**

Sentencing should emphasize the deleterious impact of the crime on the victim and the broader community, rather than the offender's prior good deeds. This approach ensures that the consequences of the crime are adequately addressed.

In cases of sexual assault, the victim's suffering and the broader impact on societal safety and trust are paramount considerations.

## **12. Legislative and Procedural Consistency**

Currently, Section 21A(5A) of the Crimes (Sentencing Procedure) Act 1999 limits the use of good character evidence where it assisted in the commission of the offense. Extending this limitation to all sentencing proceedings for all cases of sexual assault, regardless of the age of the victim, is essential. However, there are cases where the offender has not used their respectable position or trust to commit sexual assault, and even in these cases, good character references should be disallowed.

Legislative and procedural consistency is crucial for ensuring that sentences are fair and equitable. The current limitations on the use of good character evidence should be extended to all sentencing proceedings for sexual assault to ensure that justice is not compromised.

## **Conclusion**

The need to take sexual assault, especially child sexual assault, seriously cannot be overstated. The profound harm inflicted on victims, the importance of deterrence, the necessity of maintaining public confidence in the justice system, the moral obligation to support victims, and the imperative of promoting equality before the law all demand that these crimes be met with appropriate sentences.

By ensuring that the legal system responds to sexual assault with the seriousness it deserves, we are not only upholding the principles of justice; but also sending the strong message that the community will hold offenders equally to account regardless of their social and economic standing.