VOCAL
VICTIMS OF CRIME ASSISTANCE LEAGUE (HUNTER)

Submission to the NSW Sentencing Council

Review of good character in sentencing

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February 2025

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About the Victims of Crime Assistance League

Victims of Crime Assistance League (VOCAL) is an incorporated charity that supports all people, including children, throughout NSW, who are victim-survivors of violent crime. For the past 35 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from the NSW Department of Communities and Justice (via Victims Services) to provide a free service to victims of crime, particularly in NSW's Hunter Region. Support is individualised to the specific needs of each survivor and includes physical, psychological, socio-economic and socio-legal support and assistance.

Introduction

This submission is presented by VOCAL, in response to the Sentencing Council's review of Section 21A(5A) of the ***Crimes (Sentencing Procedure) Act 1999***[1] and the broader use of "good character" as a mitigating factor in sentencing, specifically in relation to child sexual offences. As a service that supports victims of crime, particularly survivors of sexual violence, we are deeply invested in ensuring that the justice system effectively addresses the unique needs of victim-survivors, promotes accountability, and delivers fair and appropriate outcomes in sentencing.

Our submission will address the terms of reference outlined by the Attorney General, with particular emphasis on the impact of "good character" evidence in sentencing proceedings for child sexual offences. We will focus on the implications of Section 21A(5A), including whether the current limitations on the use of good character as a mitigating factor are sufficient, and whether they should be extended to all child sexual offence cases. We will also highlight the experience of victim-survivors in these proceedings, offering insights into how the use of such evidence can affect their sense of justice and their experience within the legal system.

In this submission, we will offer recommendations aimed at ensuring a fairer, more trauma-informed approach to sentencing, where the rights and dignity of victims are prioritised. Our goal is to contribute to a system that holds offenders accountable, while also ensuring that the experiences and voices of victim-survivors are meaningfully considered in the sentencing process.

In this submission, we will offer recommendations aimed at ensuring a fairer, more trauma-informed approach to sentencing, where the rights and dignity of victims are prioritised. Our goal is to contribute to a system that holds offenders accountable, while also ensuring that the experiences and voices of victim-survivors are meaningfully considered in the sentencing process.

This review is being conducted against a backdrop of increasing dissatisfaction with the application of the special rule under Section 21A(5A) of the ***Crimes (Sentencing Procedure) Act 1999***, particularly in cases involving child sexual offences. Concerns have been raised about how the rule

[1] https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/cpa1999278/

has been interpreted by the judiciary and the potential for "good character" evidence to be misused in sentencing.

"Your Reference Ain't Relevant" Campaign 2023

These concerns have led to calls for reform. A key driver of this push for change is the "Your Reference Ain't Relevant" campaign, which advocates for the removal of "good character" and a lack of prior criminal history as mitigating factors in sentencing for child sexual abuse offences. Founded by child sexual abuse survivors Jarad Grice and Harrison James, the "Your Reference Ain't Relevant" campaign was launched in May 2023 to challenge the practice of allowing offenders' previous good character to reduce their sentences. The campaign's petition, which received over 4,340 signatures, was presented to the Legislative Council on 22 August 2023[2], calling for an amendment to Section 21A(5A) to remove the requirement that an offender's good character must have assisted them in committing the offence in order for it to be disregarded.

The campaign highlights the manipulative nature of child sexual abuse, where offenders often use positions of trust, authority, and respect within the community to facilitate their crimes. In such cases, allowing good character to mitigate sentencing outcomes can effectively shield offenders from full accountability. The campaign has gained momentum across Australia, calling for a victim-centred approach to sentencing that prioritises the experiences of victim-survivors and ensures that perpetrators are held fully accountable, regardless of their prior standing in the community.

Sexual violence has profound and lasting effects on victim-survivors, with each individual experiencing its impact differently. Immediately following an assault, survivors may suffer from intense fear, confusion, dissociation, and memory loss. Over time, many develop serious psychological and physical health challenges, including anxiety, panic attacks, nightmares, depression, and post-traumatic stress disorder (PTSD).

Sexual violence is a widespread issue, affecting one in three women globally. In Australia, over a third of sexual assaults occur within domestic and family violence (DFV) contexts. Despite its prevalence, reporting rates remain low, with only 13% of Australian survivors coming forward[3]. A range of personal, cultural, social, and systemic barriers contribute to this reluctance, including the risk of re-traumatisation during legal proceedings. Many survivors find the justice system disempowering, stigmatising, and even harmful, as court processes can expose them to distressing experiences.

Although legal reforms over the past fifty years have led to some progress, significant gaps remain. There is increasing recognition, both in Australia and internationally, that further changes are needed to make the justice system more accessible and less traumatising for survivors. One promising approach is to introduce greater specialisation in how sexual offence cases are managed, ensuring a more victim-centred and supportive legal process.

[2] https://www.parliament.nsw.gov.au/hp/housepaper/29251/D230801.15.pdf
[3] https://aija.org.au/wp-content/uploads/2023/10/Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings_An-Integrative-Review_05.pdf

The Case against Good Character References in Sentencing

The submission of good character references in sentencing proceedings raises fundamental concerns about fairness, accountability, and the integrity of the justice system. While such references are often presented to provide a broader perspective on the offender, their inclusion can distort the sentencing process by shifting focus away from the crime and its impact on the victim. This practice not only undermines the principle of equal justice but also risks perpetuating systemic biases that favour those with social privilege and influence. Below are detailed reasons why good character references should not be allowed in sentencing, particularly in cases of serious crimes such as child sexual abuse.

1. Minimisation of the Harm Caused by the Offence

Good character references can create an unbalanced narrative that downplays the severity of the crime. By highlighting an offender's positive attributes, such as community involvement, professional success, or personal relationships the focus is shifted away from the harm suffered by the victim. This can lead to a perception that the offender's previous good behaviour somehow offsets or diminishes the impact of their crime.

In cases of sexual violence, domestic abuse, or other crimes involving power imbalances, this effect is particularly concerning. Many perpetrators maintain a respectable public image while committing heinous offences in private. Allowing good character references in these circumstances risks presenting an offender as a "good person who made a mistake," rather than holding them fully accountable for their actions. The justice system must prioritise the harm inflicted on victims, rather than offering undue weight to an offender's social standing.

A particularly striking example of this issue occurred in the case of Cardinal George Pell, a senior Catholic Church official who was convicted (and later acquitted on appeal) of child sexual abuse. During his legal proceedings, Pell was provided with a character reference by then-Australian Prime Minister John Howard, who described him as a person of "high intelligence and exemplary character."[4] Such a statement from a figure of national leadership carried significant weight, reinforcing the idea that Pell's status and previous contributions should influence how he was judged.

For Pell's victims and survivors of child sexual abuse more broadly, this public endorsement from the Prime Minister would have been profoundly distressing. It sent a message that Pell's prior reputation and standing in the community were being valued over the lived experience and suffering of his victims. Such references risk re-traumatising survivors, making them feel as though their pain and the crimes committed against them are being dismissed or overshadowed by the offender's prior status. It also contributes to a broader

[4] https://www.sbs.com.au/news/article/howard-provided-pell-with-a-character-reference-abbott-says-verdict-devastating-result/ww0fen4zn

culture of silence and disbelief surrounding abuse, particularly in institutional settings where perpetrators often use their influence to avoid scrutiny.

This example highlights why good character references should not be permitted in sentencing, particularly in cases involving serious crimes such as child sexual abuse. The justice system must focus on the harm done to victims rather than allowing the past reputations of offenders to serve as a shield against accountability.

2. Irrelevance to Accountability and Justice

Sentencing should reflect the severity of the offence, deliver justice for the victim, and ensure the offender is held fully accountable. While an offender's past contributions to their community or professional success may be noteworthy, they do not diminish the fact that they have committed a crime. A person's reputation or standing in society should not overshadow the harm they have inflicted.

The case of Saxon Mullins highlights the dangerous implications of allowing good character references to influence sentencing[5]. Her accused rapist was acquitted despite over 20 character references attesting to his good standing. This case exemplifies how such references can create an imbalance in the justice system, where the offender's reputation takes precedence over the survivor's trauma[6]. The implication is that a person with strong community ties or professional accolades is less deserving of punishment—an approach that fundamentally undermines the principles of justice and accountability.

Allowing good character references creates an inherent double standard. It suggests that individuals with privilege, social influence, or professional success should receive more lenient treatment than those without such advantages. Justice must be based on the gravity of the crime and its impact on the victim, not on subjective testimonials that serve to shield offenders from full accountability.

3. Perpetuation of Systemic Bias

The use of good character references disproportionately benefits those with access to powerful social networks. Individuals from privileged backgrounds—such as professionals, executives, or public figures—are more likely to receive glowing references from respected individuals, including colleagues, community leaders, or influential figures. Meanwhile, those from marginalised or disadvantaged communities may lack such connections, making them less able to present similar testimonials.

This disparity creates an unequal playing field in sentencing. A well-connected offender may receive leniency simply because of who they know, while someone without those resources

[5] https://www.bbc.com/news/world-australia-61714818

[6] https://classic.austlii.edu.au/au/journals/UNSWLawJl/2019/17.html

faces harsher consequences for the same crime. This practice reinforces systemic bias within the justice system, contradicting the principle that justice should be blind to status, wealth, or social influence.

The Jeff Corfe case exemplifies how good character references can be misused to shield offenders from full accountability[7]. Corfe, a former scout leader and school bus driver, was convicted of sexually abusing multiple children over several decades. Despite the gravity of his crimes, he was provided with numerous good character references from people who described him as a "trusted community member" and a "respected mentor." These references attempted to paint him as a person of high moral standing, despite overwhelming evidence of his predatory behaviour.

Such references not only undermine the severity of the crimes committed but also cast doubt on the credibility of the victims. For survivors of abuse, seeing their perpetrator praised in court can be deeply traumatic and discouraging, reinforcing the perception that the justice system favours those with influence and connections.

Moreover, Corfe's case illustrates how offenders can manipulate their public image to evade justice. Many perpetrators of sexual violence, particularly those in positions of authority, cultivate a reputation of trustworthiness to facilitate their crimes. By leveraging character references, offenders can weaponise their social standing to mitigate sentencing, creating a loophole in the justice system that benefits the powerful at the expense of victims.

To ensure true justice, courts must recognise the inherent imbalance of power in these cases and prioritise the harm inflicted on victims over the personal reputations of offenders. The judicial system should not allow subjective endorsements to overshadow the reality of a crime, particularly in cases of sexual violence and child abuse.

4. Re-Traumatisation of Victims

The judicial process can already be deeply distressing for victims of crime, particularly for survivors of sexual violence or abuse. The inclusion of good character references in sentencing proceedings adds another layer of trauma by shifting focus onto the offender's reputation and achievements, rather than the harm done to the victim.

For many survivors, hearing a courtroom discussion about an offender's community contributions or personal virtues can feel like a dismissal of their own suffering. It can send a message that the offender's prior good standing is of greater importance than the harm they inflicted. This can lead to feelings of invalidation, distress, and a loss of faith in the justice system.

Full Stop Australia, supported by Domestic Violence NSW, advocates for legislative amendments to make evidence of an offender's character inadmissible in sentencing for all

[7] https://www.abc.net.au/news/2023-02-27/alex-case-child-sexual-abuse-jeffrey-joffa-corfe-court/101991600

child sexual offences[8]. They endorse the "Your Reference Ain't Relevant" campaign, which seeks to prevent the use of character references in sentencing for such crimes.

Currently, section 21A(5A) of the Crimes (Sentencing Procedure) Act creates a double standard, allowing character references to be considered in certain cases, depending on the setting of the abuse. Full Stop Australia argues this is inappropriate and calls for uniform standards where past character is excluded from sentencing in all child sexual offence cases.

The organisation asserts that good character should never mitigate sentencing for child sexual abuse due to the severity and unique dynamics of these offences. They argue that considering an offender's past good deeds in these cases undermines the gravity of the crime and can retraumatise victim-survivors. By making character references inadmissible, Full Stop believes the fairness and consistency of the sentencing process will be enhanced, giving victim-survivors more confidence in the criminal justice system's response to sexual assault.

The seriousness and prevalence of child sexual abuse demand that character references cannot reduce the offender's culpability. Full Stop Australia calls for legislative change to ensure justice is served without the interference of subjective character assessments.

5. Erosion of Deterrence and Public Confidence

The justice system serves not only to punish offenders but also to deter future crimes and uphold public trust. When good character references lead to lenient sentencing, it risks sending a message that individuals with privilege or social standing can escape full accountability for their actions.

This perception can erode public confidence in the fairness of the judicial process. Victims, their families, and the wider community may come to believe that justice is not applied equally, fostering distrust in the legal system. A sentencing process that is seen to prioritise the reputation of offenders over the rights of victims undermines the fundamental principles of fairness and deterrence.

A clear example of this is the case of Thomas Earle, an offender in the Australian Capital Territory (ACT) who was convicted of rape but evaded jail time due, in part, to the submission of multiple good character references[9]. Earle, a man of significant social standing, received more than 20 character references from prominent figures, including friends, colleagues, and family members. These references painted him as a person of good

[8] https://fullstop.org.au/uploads/main/Submissions-Reports/2024/FSA-NSW-Sentencing-Council-Submission-9.7.24.pdf

[9] https://www.abc.net.au/news/2023-04-29/rapist-thomas-earle-sentenced-to-three-years-ico/102278630

moral character, despite his criminal actions. The court, influenced by these references, sentenced him to a suspended sentence, meaning he did not serve time in prison for the rape he committed.

This case highlights the dangers of allowing good character references in sentencing, as it shows how an offender's social status and character endorsements can overshadow the severity of the crime committed. The public's confidence in the justice system was shaken by this outcome, as many felt that a person with privilege could escape the consequences of their actions simply because they had influential connections. This decision further damages trust in the justice system and reduces the deterrent effect that sentencing is meant to have on potential offenders.

6. Potential for Manipulation

Good character references are inherently subjective and can be influenced by bias, personal loyalty, or incomplete knowledge of the offender's behaviour. Those providing references may lack awareness of the full extent of the offence or its impact, leading to a distorted portrayal of the offender. Additionally, the inclusion of such references opens the door for manipulation, where offenders actively seek out favourable testimonials to sway sentencing outcomes. In some cases, individuals convicted of serious crimes may use their social connections to secure positive references, unfairly influencing judicial decisions.

One critical issue is that good character references have a low standard of proof and are never subject to cross-examination. This means that such references can be presented without being rigorously tested for their validity or accuracy, further compromising the fairness of the sentencing process. This lack of scrutiny makes it easy for offenders to manipulate the system by leveraging personal connections to present an idealised version of their character, which may not reflect their true nature or the severity of their crimes. This further undermines the objectivity and consistency of the judicial process, potentially resulting in lenient sentences that do not accurately reflect the harm caused to victims.

Question 5.1: Use of good character generally

(1) Should consideration of good character as a mitigating factor be abolished in all cases? Why or why not?

Yes, the consideration of good character as a mitigating factor should be abolished in all cases. Sentencing should reflect the seriousness of the offence and the harm inflicted on the victim, rather than an offender's past behaviour. We need a shift in our traditional approached to sexual assault matters. Allowing good character to reduce a sentence creates an imbalance, particularly in power-based offences such as child sexual abuse, domestic

violence, and financial crimes involving breaches of trust. In many cases, offenders use their good reputation to gain trust and facilitate their crimes, making it wholly inappropriate to use this as a justification for leniency.

Moreover, this practice disproportionately benefits individuals with social privilege, reinforcing systemic biases in sentencing. Those with greater access to opportunities and resources are more likely to have a record of "good character," which can unfairly shield them from the full consequences of their actions. This results in an unjust disparity, where individuals from marginalised backgrounds are more likely to receive harsher sentences. Additionally, considering good character as a mitigating factor may discourage victims from reporting crimes, particularly when the offender is a respected figure within the community. Research tells us that the reporting rates of sexual assault are extremely low[10].

The primary objectives of sentencing are to ensure justice, protect the public, and deter future offences. Reducing a sentence based on an offender's prior good character undermines these principles, especially when the crime itself constitutes a profound breach of trust or abuse of power. Instead of focusing on an individual's past reputation, the legal system should prioritise the severity of the crime, the on-going and long-lasting harm caused to victims, and the risk posed by the offender.

(2) How could consideration of evidence of good character be limited?

If not abolished entirely, the consideration of good character should be strictly limited to offences where it played no role in facilitating the crime. For example, in cases where an offence was impulsive or committed under exceptional circumstances, rather than being premeditated or involving an abuse of trust, or a lengthy time of grooming behaviours, good character could be given limited weight.

Additionally, courts should prioritise the impact of the offence on victims over an offender's prior contributions to society. A stringent test should be applied to determine whether good character evidence is relevant, and its admission should require compelling justification. This test should include considerations such as:

Whether the offender's reputation or social standing was used to commit, conceal, or enable the crime.

Whether the offence involved a breach of trust or authority.

Whether considering good character as a mitigating factor would create an appearance of unfairness or discourage victims from coming forward.

Judicial guidelines should clearly define circumstances where good character evidence is inadmissible or should be given minimal weight. This would promote a more equitable and

[10] https://dcj.nsw.gov.au/documents/service-providers/domestic-and-family-violence-services/NSW-Sexual-Violence-Plan-2022%e2%80%932027.pdf

victim-centred approach to sentencing, reducing systemic bias while ensuring fairness in rare, truly exceptional cases.

Question 5.2: Use of Lack of Previous Convictions Generally

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

Yes, the absence of previous convictions should not be considered a mitigating factor in sentencing. While a history of prior offending may be relevant in assessing the risk of recidivism, the mere absence of a criminal record does not necessarily indicate lower culpability or moral or good character. First-time offenders who commit serious crimes such as sexual offences, domestic and family violence, or crimes involving significant intimidation, coercion or breaches of trust, should not automatically be entitled to leniency simply because they have not been caught offending before.

Relying on the absence of a criminal record as a mitigating factor can create an unjust disparity in sentencing. Many serious offences, particularly those involving coercion, abuse of power, or manipulation, often go undetected, unidentified or unreported for long periods. Consequently, an individual's lack of prior convictions may reflect a failure of the justice system to intervene earlier rather than genuine law-abiding behaviour. Furthermore, treating first-time offenders of serious crimes more leniently can diminish the severity with which these offences are perceived, failing to adequately reflect the harm caused to victims and the broader community.

Sentencing should be based primarily on the nature and impact of the offence, rather than an offender's prior history or lack thereof. Removing the absence of prior convictions as a mitigating factor would help ensure that all offenders are held accountable for their actions in a manner that prioritises justice, public safety, and victim-centred approaches.

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

The absence of prior convictions should not be considered in mitigation when sentencing for serious offences, particularly those involving sexual violence, domestic abuse, exploitation, or crimes where the offender occupied a position of trust or authority. These types of offences are often characterised by patterns of behaviour that may go undetected for years, meaning a lack of formal convictions does not necessarily indicate that the offender has not engaged in previous criminal conduct.

For instance, in cases of sexual assault or domestic violence, perpetrators frequently evade prosecution due to factors such as victim fear, societal stigma, or systemic failures in the justice system. In such cases, treating a first conviction as indicative of a lower risk of reoffending is misleading and risks undermining justice for victims. Similarly, in financial crimes involving fraud or embezzlement, offenders may have engaged in years of

misconduct before facing legal consequences, making it inappropriate to view them as less culpable solely because they have not been convicted before.

Moreover, mitigating sentences based on a lack of prior convictions can disproportionately benefit individuals with social privilege, as those with greater access to legal resources, influence, or institutional protections may be less likely to have previous convictions, despite engaging in wrongful behaviour. To prevent systemic bias and ensure consistency in sentencing, judicial guidelines should explicitly limit or exclude the use of an offender's clean record as a mitigating factor in cases involving serious harm, abuse of power, or breaches of trust.

By shifting the focus away from an offender's prior history and towards the severity of the crime and its impact on victims, the justice system can promote a fairer and more balanced approach to sentencing.

Question 5.3: Use of Good Character for Offenders Who Plead Not Guilty

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

Good character should not be considered a mitigating factor for any offender who pleads not guilty and is subsequently convicted, particularly in cases involving serious offences such as child sexual abuse, domestic violence, sexual assault, or fraud. These offences often involve significant harm to victims, who may already face considerable barriers to reporting, including fear, stigma, and concerns about not being believed. Allowing good character to mitigate sentencing in such cases undermines the severity of the offence and the harm caused.

Furthermore, a not-guilty plea can prolong the legal process, requiring victims to endure cross-examination, re-live their trauma, and potentially face re-traumatisation through adversarial proceedings. In many cases, offenders who maintain their innocence do so despite overwhelming evidence against them, further compounding the distress experienced by victims and discouraging future reporting. Rewarding offenders with reduced sentences for prior good character in these circumstances is not only unjust but also sends a damaging message about the treatment of survivors in the legal system.

Additionally, in cases involving power-based offences—such as sexual abuse or financial deception—offenders frequently use their social standing and good reputation to facilitate their crimes. This means that their so-called "good character" was not merely incidental but may have directly enabled them to gain trust, groom victims, or evade detection for extended periods. In such cases, allowing good character as a mitigating factor contradicts the reality that the offender's previous reputation played a role in their offending, rather than serving as evidence of their overall moral integrity.

Beyond these specific offences, broader sentencing principles should discourage the use of good character as a mitigating factor for convicted offenders who plead not guilty. Sentencing should reflect the nature and impact of the offence, as well as the level of remorse and accountability demonstrated by the offender. A not-guilty plea, particularly in cases where the evidence is strong demonstrates a refusal to take responsibility, which should weigh against the offender in sentencing rather than be offset by their previous standing in the community.

To ensure fairness and consistency, judicial guidelines should clearly state that good character is inadmissible as a mitigating factor for any offender who pleads not guilty in cases involving serious harm, abuse of authority, or victim vulnerability. This approach would help prioritise victim-centred justice responses, encourage accountability from offenders, and reduce systemic biases that disproportionately favour individuals with social privilege.

Question 5.5: Extending the Special Rule to All Child Sexual Offences

(1) Should the special rule be extended to all child sexual offences? Why or why not?

The special rule should be extended to all child sexual offences. Crimes of this nature are fundamentally exploitative and involve a significant power imbalance between the offender and the victim. Child sexual abuse is not a momentary lapse in judgment but a deliberate and predatory act that often involves grooming, manipulation, and deception. This abuse frequently occurs over a prolonged period, demonstrating the intentional and premeditated nature of the offence. Offenders often rely on their social standing, professional reputation, or perceived good character to gain access to children, build trust with families, and evade suspicion from authorities. Allowing good character as a mitigating factor in sentencing contradicts the reality that an offender's standing in the community may have directly contributed to their ability to commit the crime.

Furthermore, the lifelong trauma experienced by survivors of child sexual abuse underscores the gravity of these offences. The impact on a victim's psychological, emotional, and physical well-being can last for decades, affecting relationships, mental health, and overall quality of life. Given the severity and enduring consequences of these crimes, sentencing should prioritise justice for victims and the protection of the community over any perceived mitigating effect of an offender's prior reputation.

Additionally, research and case studies indicate that many child sex offenders engage in repeated or escalating patterns of abuse, often offending over extended periods before being caught. A lack of previous convictions does not necessarily indicate that the offender is a first-time perpetrator but may instead reflect the underreporting and difficulty in prosecuting these crimes. Therefore, the justice system must ensure that sentencing

appropriately reflects the nature of the offence and the risks posed by the offender, rather than being influenced by irrelevant factors such as good character.

By extending the special rule to all child sexual offences, the legal system would reinforce its commitment to holding offenders fully accountable, ensuring consistency in sentencing, and preventing systemic biases that could result in undue leniency for those who have previously maintained a positive public image.

(2) What offences, if any, should be added to the definition of "child sexual offences" for the purposes of the special rule?

The definition of "child sexual offences" should be comprehensive and encompass all forms of sexual exploitation and abuse of children, including offences that do not necessarily involve direct physical contact. Research points to an increase of on-line child sexual abuse by 122%, including Technology-facilitated sexual violence (TFSV) and Image-based abuse (IBA)[11]. In addition to existing child sexual abuse laws, the following offences should be explicitly included:

- Online Grooming and Sexual Exploitation – Offenders who engage in grooming children online for sexual purposes should face the same legal consequences as those who commit in-person offences. Online platforms are increasingly used to manipulate, coerce, and exploit vulnerable children, making it essential to recognise these offences as equally serious.
- Possession, Distribution, and Production of Child Abuse Material – The creation, possession, or sharing of child sexual abuse material fuels the exploitation of children and contributes to the demand for further abuse. Offenders who engage in such crimes actively harm children, even if they do not have direct physical contact with victims.
- Facilitation of Child Sexual Exploitation – Any conduct that enables, organises, or profits from child sexual abuse—such as trafficking, coercion, or providing access to children for sexual purposes—should be included within the scope of the special rule.
- Sexual Communication with a Child – Laws addressing sexual messages, solicitation, or attempts to engage a child in sexual activity should be strengthened to ensure that offenders cannot escape serious sentencing on the basis of their past reputation or good character.

Expanding the definition to include these offences ensures that all forms of child sexual exploitation are treated with the gravity they deserve. This approach would align with the principles of child protection and victim-centred justice while closing potential legal loopholes that could allow offenders to receive undue leniency.

[11] https://dcj.nsw.gov.au/documents/service-providers/domestic-and-family-violence-services/NSW-Sexual-Violence-Plan-2022%e2%80%932027.pdf

Question 5.7: Extending the Special Rule to Adult Sexual Offences

(1) What adult sexual offences, if any, should be subject to the special rule?

From a victim support perspective, the special rule should apply to all sexual offences, including but not limited to:

- **Rape and Sexual Assault** – Survivors of these crimes experience profound and lasting trauma, affecting their mental health, relationships, and overall well-being. The justice system must ensure that sentencing reflects the severe harm caused, without allowing an offender's prior reputation to diminish accountability.
- **Sexual Coercion and Exploitation** – Many survivors are forced into sexual acts through threats, blackmail, or the abuse of power. These offences can be just as damaging as physical sexual violence, and perpetrators should not receive leniency based on previous good character.
- **Image-Based Sexual Abuse** (e.g., non-consensual sharing of intimate images, voyeurism, deepfake pornography) – The distribution or creation of intimate images without consent can have devastating effects, including psychological distress, reputational harm, and loss of personal safety. As technology continues to be misused to exploit victims, the law must recognise these offences with the seriousness they deserve.
- **Sexual Offences Involving Deception or Abuse of Authority** – Many offenders use deception or exploit positions of trust to commit sexual crimes, such as impersonating another person, misleading victims about the nature of their actions, or abusing professional authority. When an offender's standing in the community has facilitated their offence, this must not be grounds for leniency but a reason for greater scrutiny.

Survivors of sexual violence often face barriers to justice, including stigma, fear of disbelief, and power imbalances that protect offenders. Extending the special rule to all sexual offences ensures that sentencing prioritises survivor safety, fairness, and the recognition of long-term harm, rather than affording leniency based on an offender's social standing.

(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?

In cases where an offender's perceived good character or professional status enabled them to commit a sexual offence, this should not reduce their sentence but be recognised as an aggravating factor. Many perpetrators actively use their reputation to gain trust, access victims, and avoid suspicion. Examples include:

- **Trusted Professionals** (e.g., Doctors, Therapists, Religious Leaders, and Teachers) Survivors often turn to these figures for support, care, or guidance, only to be

manipulated and abused. Their professional status not only grants them access to vulnerable individuals but can also discourage victims from reporting due to fear of disbelief or institutional cover-ups.

- **Public Figures and High-Status Individuals** (e.g., Politicians, Celebrities, Athletes, and Community Leaders) – High-profile offenders often rely on their influence to silence victims and avoid accountability. Survivors in these cases frequently face additional trauma, including public scrutiny, threats, and reputational damage, making it essential that justice is not compromised by an offender's status.
- **Workplace Power Dynamics** (e.g., Employers, Supervisors, and Senior Colleagues) – Sexual abuse in professional environments often involves coercion, where victims feel powerless to refuse due to fear of career consequences. When an offender abuses their authority in this way, their prior reputation should be seen as a tool of harm rather than a mitigating factor.
- **Offences Involving Grooming or Manipulation** – Many offenders cultivate trust and dependency before committing sexual offences, making it difficult for victims to recognise or resist abuse. The use of good character as a means of control and deception should be treated as an aggravating aspect of the crime, not as a factor in reducing a sentence.

Concluding remarks

At the heart of this review are the voices and experiences of victim-survivors—those who have endured the profound and lasting trauma of sexual violence. Their courage in seeking justice must be met with a legal system that prioritises their rights, dignity, and well-being. The continued use of "good character" as a mitigating factor in sentencing for child sexual offences fundamentally undermines this goal, allowing perpetrators to benefit from the very trust and respect they used to commit their crimes. This practice fails to reflect the realities of sexual violence and contributes to a justice system that too often retraumatises survivors rather than supporting them.

A trauma-informed approach to sentencing is essential to ensuring that survivors are not only heard but also respected within the legal process. The justice system must recognise the unique vulnerabilities of those who have experienced sexual violence and take meaningful steps to reduce the harm they face in court proceedings. This includes removing sentencing practices that diminish the severity of these crimes, adopting survivor-centred legal frameworks, and ensuring that those in positions of power are held fully accountable for their actions.

Survivors have long advocated for a justice system that reflects the realities of their experiences—one that does not minimise harm or shield offenders from full accountability. The "Your Reference Ain't Relevant" campaign has amplified these calls for change,

highlighting the urgent need for reforms that prioritise justice for victim-survivors over the reputations of those who have caused harm. By removing the consideration of an offender's good character in sentencing, the legal system would take a critical step toward acknowledging the manipulative and premeditated nature of these crimes.

VOCAL stands in solidarity with survivors and urges the Sentencing Council to adopt reforms that centre their experiences and protect future generations from harm. A justice system that is truly fair and equitable must not only hold offenders accountable but also work to restore dignity and safety to those it serves. Now is the time for meaningful, survivor-led change—ensuring that the legal system no longer reinforces the very power structures that enable abuse but instead becomes a source of justice and healing for those who need it most.

We extend our sincere thanks to the Sentencing Council for the opportunity to contribute to this vital consultation. This review represents a critical moment for meaningful reform, and we appreciate the Council's commitment to examining these issues with the seriousness they deserve. We hope that the insights and recommendations provided will help shape a justice system that truly reflects the needs and rights of victim-survivors.