

Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025.

Full Stop Australia Submission



About this Submission

Full Stop Australia thanks the Justice, Integrity and Community Safety Committee for inviting submissions on the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025* (the **Bill**).

Given capacity constraints, we have only been able to comment on aspects of the Bill that qualify the court's treatment of good character as a mitigating factor in sentencing persons convicted of offences of a sexual nature.

If you require further information about the matters raised in this submission, please contact Emily Dale, Head of Advocacy, at emilyd@fullstop.org.au or 0406 339 500.

About Full Stop Australia

Full Stop Australia is a nationally focused not-for-profit organisation which has been supporting victim-survivors of sexual, domestic, and family violence since 1974. We started as Sydney Rape Crisis Collective—the first service in Australia dedicated to delivering services to, and advocating for, survivors of sexual violence. Today, we perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma.
- Conduct best practice training and professional services to support frontline workers, government, and the corporate and not-for-profit sectors.
- Advocate for laws and systems better equipped to respond to, and ultimately prevent, sexual, domestic and family violence.

Our work is guided by the lived expertise of over 850 survivor-advocates in our [National Survivor Advocate Program \(NSAP\)](#). The NSAP gives victim-survivors of sexual, domestic and family violence a platform to share their experiences to drive positive change. Through the NSAP, survivor-advocates can access opportunities to share their stories in the media, weigh in on Full Stop Australia's submissions to Government, and engage directly with Government, businesses and other stakeholders. We are committed to centring the voices of victim-survivors in our work and advocating for laws and systems that genuinely meet their needs.

Full Stop Australia is working to put a full stop to sexual, domestic, and family violence through **support, education, and advocacy**.

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Comments on the Bill

Full Stop Australia supports the policy intent behind amendments in the Bill to qualify the court's treatment of character when sentencing sexual offenders. These are detailed in the Queensland Sentencing Advisory Council (**QSAC**) report, *Sentencing of Sexual Assault and Rape: The Ripple Effect* (the **Report**), and include that:

- The use of character references in sentencing is distressing for victims.
- Sentencing outcomes for sexual assault and rape offences should reflect the seriousness of these offences, including their impact on victims.
- Character references can be subjective and contain non-professional opinions, which can undermine perpetrator accountability.
- Standing in the community generally has no role in assessing a person's culpability and seriousness of the offending.

We believe the Bill would be strengthened if the legislative amendments went further—to provide that 'the offender's good character, to the extent it has been established by a character reference, standing in the community, or contributions to the community'¹ (together, **character evidence**) may not be used *at all* as a mitigating factor in the sentencing of sexual offences.

Providing that character evidence cannot be considered in relation to sentencing for sexual offending would serve the following purposes:

- It recognises the seriousness of sexual offending.
- It recognises that misuse of ostensibly good character can be inherent to sexual offending.
- It would remove an aspect of the sentencing process many victim-survivors find harmful and retraumatising.
- This may lead to more victim-survivors of sexual violence coming forward to report, which is important, given low reporting and conviction rates for sexual offending.
- It recognises the absence of a clear link between character evidence and a lower risk of sexual reoffending—and that prospects of rehabilitation and likelihood of reoffending can be more reliably determined in other ways.

We have extrapolated on these reasons below.

¹ Explanatory Note to the Bill.

Character can assist sexual offenders to offend

The perceived 'good' character of sexual offenders often assists them to offend—with many perpetrators relying on an outwardly good reputation to gain access to, or the trust of, their victims. This might be because they are able to hold themselves out as a person of 'good' character in the workplace, at school or university, on a dating app, at a bar, club or other social setting, or through relationships with mutual friends.

Given these dynamics, consideration of an offender's 'character' can allow them to take advantage of the very thing that assisted them to offend during the sentencing process. This is manifestly unjust, and represents one of many barriers to victim-survivors of sexual crimes receiving any accountability for the harms done to them. We therefore support an amendment to the Bill which would altogether preclude the use of character evidence in sentencing for sexual offences.

The use of character evidence in sentencing can lead to lenient sentences for serious crimes

The use of character evidence in sexual offence matters can lead to lenient sentences, which are out of step with community expectations and the seriousness of these crimes. For example, the sentencing in the ACT of Thomas Earle, a convicted rapist, shows how character references can be used to enable sexual offenders to avoid custodial sentences—with the judge sentencing Earle to 300 hours' community service (and no jail time), and commenting on his 'good character' based on several character references.² This can undermine the legitimacy or credibility of the justice system, by giving rise to the perception that sexual offenders will not be held fully accountable for their actions. This weakens both general and specific deterrence for some of the most serious crimes.

Even if only used to assess 'prospects of rehabilitation' or 'risk of reoffending,' as is proposed in section 9(3B) of the Bill, allowing character to be considered at all in sentencing for sexual crimes has the potential to allow offenders to exploit a loophole in the criminal system to evade a penalty commensurate with the seriousness of their crime.

Character evidence is of limited value in determining prospects of rehabilitation and risk of reoffending

² See Roberts, Georgia. 'Canberra rapist Thomas Earle avoids jail time, sentenced to 300 hours of community service.' *ABC*. 29 April 2023. Available at: <https://www.abc.net.au/news/2023-04-29/rapist-thomas-earlesentenced-to-three-years-ico/102278630>.

There is no need to allow character evidence to be used to assess an offender's prospects of rehabilitation or risk of reoffending, as there are other, more evidence-based ways to assess these matters. For example, section 9(3)(j) of the *Penalties and Sentences Act 1992* (Qld) allows consideration of 'any medical, psychiatric, prison or other relevant report in relation to the offender' to be considered during sentencing. The court is more likely to get an accurate picture of an offender's prospects of rehabilitation or likelihood of reoffending from such reports—which are prepared by professionals, and therefore subject to professional standards and scrutiny—than they are from character references. Unlike official reports, the latter can come from any friend or contact of the offender, and are of limited probative value, given they are not subjected to professional standards, the rules of evidence or any other form of oversight.

In the absence of a clear link between perceived character and a lower risk of sexual reoffending, taking character into account in sentencing for sexual offences is of questionable value in determining prospects of rehabilitation, likelihood of reoffending, or future risk to the community.

Consideration of character in sentencing can be retraumatising to victim-survivors of sexual offending

The use of character evidence in sentencing also worsens victim-survivors' experience of the justice system, and diminishes their belief that it is a system capable of recognising the harm caused by sexual violence. The use of character references in sentencing is a particularly retraumatising element of the Court process for sexual violence survivors, many of whom report they find it incredibly painful to hear reviews of their offender's 'good character' during sentencing.

The use of character evidence in sentencing for sexual violence can also cause the following systemic harms:

- Perpetuating a harmful culture of misconceptions around sexual offending and the encouragement of victim-blaming.
- Discouraging disclosure of offences.

The latter is especially concerning, given low reporting and conviction rates for sexual offending:

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- The latest Australian Bureau of Statistics data on sexual violence shows that only 8% of women who were sexually assaulted by a male perpetrator in the ten years leading up to the survey ever reported to police.³
- Recent analysis by the NSW Bureau of Crime Statistics and Research (**BOCSAR**) found that, of all sexual assault incidents reported to NSW Police in 2018, only 15% of matters resulted in charges laid, and only 7% of historic sexual assaults and 6% of contemporary sexual assaults resulted in a conviction.⁴

Addressing these conditions through a comprehensive bar on the use of character evidence in sentencing would serve the public interest of ensuring that those who use sexual violence are held accountable for their actions, and that victims of violence are supported to come forward. We therefore support strengthening the Bill to provide that character evidence may not be considered *at all* to mitigate the sentencing of sexual offenders.

The seriousness, prevalence, and unique dynamics of child sex offences means character should never mitigate sentencing

As set out in the Explanatory Note to the Bill, in relation to sexual offending against children under 16, the amendments in the Bill would apply ‘subject to the requirement that the court must not treat an offender’s good character as a mitigating factor if it assisted them to commit the offence.’

For clarity, we support a blanket rule about the use of character evidence in sentencing—whereby such evidence is not used at all in sentencing for either child or adult sexual offending. Adopting this position would require a further amendment to the *Penalties and Sentences Act 1992* (Qld), to clarify that the offender’s character is inadmissible in sentencing regardless of whether it ‘assisted’ them to commit the offence or not.

This position aligns with the advocacy of the [Your Reference Aint Relevant campaign](#), started by survivor-advocates Harrison James and Jarad Grice, which Full Stop Australia has supported since early 2023. The campaign proposes that the seriousness, prevalence,

³ Australian Bureau of Statistics. (2021, August 24). Sexual Violence - Victimisation. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

⁴ Gilbert, Brigitte. (2024). Attrition of sexual assaults from the New South Wales criminal justice system. NSW Bureau of Crime Statistics and Research. https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB170Summary-attribution-sexual-assaults.aspx.

and unique dynamics of child sexual abuse mean character evidence should never serve as a mitigating factor in sentencing.

Child sexual abuse is a pervasive issue in our society. In the latest Australian Child Maltreatment Study, which surveyed 8,500 Australians aged 16-65+, 28.5% of respondents had experienced child sexual abuse.⁵ The impact of such abuse is profound, encompassing not only the offense itself, but also the grooming process employed by offenders, the silence and shame endured by victim-survivors, and the complex dynamics that often exist between offenders and their victims.

Child sex offences are a unique form of criminal activity, in that:

- Perpetrators commonly rely on an outwardly good reputation to perpetrate heinous crimes behind closed doors.
- A person's public reputation has very little to do with their propensity to offend in private.

This dynamic makes it inappropriate for past character to be considered in sentencing in any case of child sex abuse. In every case of child sexual abuse, the offender's public reputation either had no bearing on their propensity to offend, or in a worse case, was used to facilitate offending.

Section 9(6A) creates a double standard, which delivers different justice outcomes depending on the circumstances of offending

Further, the current drafting of section 9(6A) of the *Penalties and Sentences Act 1992* (Qld) creates arbitrary double standard. Depending on the circumstances of abuse—namely, whether a judge accepts the offender's character 'assisted' them to offend—sentences can differ greatly. This distinction doesn't serve a meaningful purpose.

While there is limited case law on the interpretation of section 9(6A), case law on equivalent provisions in other jurisdictions shows the potential for inconsistent application. For example, in *R v Scholz* [2023] NSWDC 222, the Court accepted that the offender was able to gain access to his victims due to his role as an RFS 'local hero' and by holding himself out to one victim's mother as having a Working With Children Check. Meanwhile, in *R v BQL* [2022] NSWDC 295, an offender who gained access to his victim by renting a room in her

⁵ Mathews B et al. (2023) 'The Prevalence of Child Maltreatment of Australia: Findings from a National Survey.' *Med J Aust.* 218 (6).

mother's house and commencing a relationship with her mother, was held not to have used 'good character' to facilitate offending.

We think the distinction being applied—how directly the offender's character assisted them to offend—is a false one. In both aforementioned cases, it seems to us that the offender's character was used to gain access to, or a position of trust or authority over, the victim(s). This was the case regardless of how directly the offender's character facilitated offending. We see no reason to distinguish between cases where the impact of character was 'indirect' (e.g. in a case where the offender relied on a 'good reputation' to foster a relationship with the victim's parents, and thereby gain access to the victim, as in *Bhatia v R* [2023] NSWCCA 12), and cases where the offender more 'directly' used good character to gain opportunities to offend (e.g. in a case where the offender could not have obtained employment as a childcare worker without evidence of good character, as in *R v Stoupe* [2015] NSWCCA 175).

Amending section 9(6A) to clarify that character evidence is inadmissible as a mitigating factor for all child sexual offences would establish a more consistent approach to sentencing, which recognises the insidious role all child sexual offenders' reputations play in allowing them to gain access to their victims.