

YourReference AintRelevant

Submission to the Australian Law Reform Commission's
Inquiry Into Justice Responses To Sexual Violence.

This submission was prepared by Harrison James, 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 [REDACTED]

Dear Australian Law Reform Commission and Hon Mark Dreyfus KC MP, Attorney-General of Australia,

I am writing to provide my input and perspective on the review of Justice Responses Into Sexual Violence. As a survivor of child sexual abuse, a passionate activist for victims of sexual violence and the prevention of child sexual abuse, and the founder of the **'Your Reference Ain't Relevant' Campaign**, which has garnered significant media attention and triggered reviews in both New South Wales and the Australian Capital Territory, 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 Australian Law Reform Commission and the Attorney-General of Australia, for undertaking this important review in light of the concerning prevalence of child sexual abuse, as well as sexual, family and domestic violence in 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 and prevent 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 we can have both.

In reviewing sentencing practices for sexual assault and rape 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. Additionally, the law serves not only as a means of punishment but also as an educational instrument for society.

A particular concern for the **'Your Reference Ain't Relevant' 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 Commonwealth 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 **'Your Reference Ain't Relevant' Campaign** revolves around the provision of good character references for convicted child sex offenders

during the sentencing process. 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.

Across states and territories, the current provisions 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 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 above all else. By implementing this reform, the nation can 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*** 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 Australian 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.

While we acknowledge that the decision rests in your hands, I earnestly implore the Australian Law Reform Commission, as well as the Attorney General, to consider and implement the proposal put forth by the **'Your Reference Ain't Relevant' Campaign**. Specifically, I advocate for creating a new Commonwealth provision 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 thank the Australian Law Reform Commission for undertaking this review and welcome the opportunity to contribute to the development of evidence-based and victim-focused sentencing practices. We urge the Commission to consider our recommendations and take proactive steps to address the challenges identified in this submission.

I believe it's crucial to note that the **'Your Reference Ain't Relevant' Campaign** is officially on the agenda and scheduled for discussion at the upcoming meeting of the Standing Council of Attorney General's 

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 from some of Australia's leading foundations and organisations dedicated to preventing child sexual abuse, as well as the findings from the 2023 Australian Child Maltreatment Study that was consistently referenced throughout this submission.

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

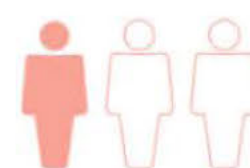
42% experienced it more than **6** times

11% experienced it more than **50** times

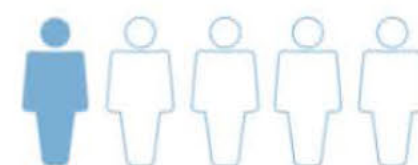
Child sexual abuse in Australia is widespread, enduring and intolerable.

Overall national prevalence breakdown by sex:

More than 1 in 3 girls experience: **child sexual abuse**



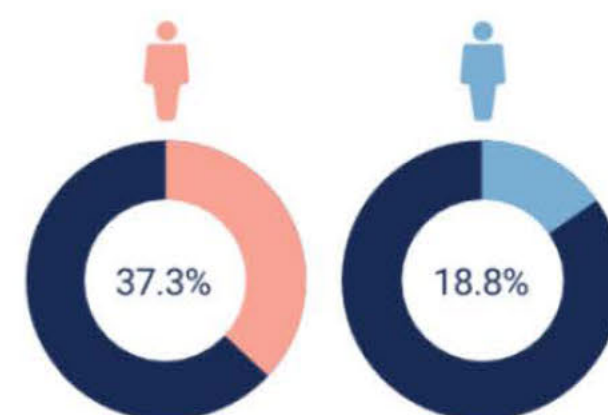
Almost 1 in 5 boys experience: **child sexual abuse**



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



To whom it may concern

**Amendment to section 21A(5A) of the Sentencing Procedure Act 1999 (NSW) in support of the
'Your Reference Ain't Relevant' campaign**

The Grace Tame Foundation (*the Foundation*), a not-for-profit philanthropic organisation established to campaign for and help fund initiatives which work to prevent and respond to child sexual abuse. The Foundation does this by working alongside government, not-for-profits, legal experts and educators to improve protections in legislation and informing and educating people in our communities by challenging and changing societal norms and behaviours by supporting conversation about child sexual abuse and amplifying survivor issues.

The Foundation is writing in support of Harrison James and Jarad Grice's campaign, 'Your Reference Ain't Relevant', where they have proposed amendments to section 21A(5A) of the *Sentencing Procedure Act 1999 (NSW) (the Act)* to remove the wording "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence".

With this amendment, you remove the ability of character references to be considered in the sentencing of persons convicted of child sexual offences. Currently, character references can be used in some cases to lessen the sentence of persons convicted of child sexual offences.

As you may be aware, the Foundation's current Harmony Campaign, aims to achieve consistent laws around the country. One of these goals was to remove the word 'relationship' from the offence name and legislation body from the crime of 'persistent sexual abuse of a child' in every jurisdiction, and to jurisdictionally harmonise the provisions of the offence.

It is our belief that if the nation achieves more harmonised child sexual offences legislation, we will be better equipped to prevent and respond to this complex issue; to protect survivors and deter perpetrators.

The recent Australian Child Maltreatment Study (ACMS) found that 1 in 4 Australians have experienced child sexual abuse, and that child sexual abuse is usually a persistent crime, with 78% of children reported that they experienced more than one offence and 42% reported they experienced more than six. Perpetrators of child sexual abuse are protected by outdated and inconsistent legislation, enabling them to operate in silence and secrecy.

All children are vulnerable due to their dependent status, however, perpetrators of child sexual abuse will also target the children's family and/or community by a calculated process of grooming. This involves gaining the trust of the community and family of the child, manipulating them to gain further access to the child and inevitably then isolate the child from their networks. These calculated and targeted grooming tactics involve levels of deceit, manipulation and intent to cause harm. Character references solicited from members of the community are only further evidence of the grooming process.

The Foundation fully supports Harrison James and Jarad Grice's campaign 'Your Reference Ain't Relevant', to amend section 21A(5A) of the *Sentencing Procedure Act 1999 (NSW) (the Act)* to remove the wording "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence".



Grace Tame
Chief Executive Officer
The Grace Tame Foundation



June 8, 2023

Dear Sir/Madam,

I am writing on behalf of Full Stop Australia (**FSA**), an accredited, nationally focused, not-for-profit organisation which has been working to end sexual, domestic, and family violence since 1971. I am writing to express FSA's endorsement of the 'Your Reference Ain't Relevant' campaign (**Campaign**).

The Campaign would altogether remove the ability of character references to be considered in the sentencing of persons convicted of child sexual offences. Currently, character references can be used in some cases to lessen the sentence of persons convicted of child sexual offences.

Under s 21A(3) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (the **Act**), an offender being 'a person of good character' (as shown by character references) is one of several 'mitigating' factors that can be considered when a judge sentences them for a criminal offence. While section 21A(5A) of the Act creates an exception to the use of character references in sentencing for child sexual offence matters, where the 'good character' of an offender 'was of assistance to the offender in the commission of the offence,' this exception does not apply in all cases. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse referred to a NSW Court of Appeal case, where a man who abused his nine-year-old stepdaughter could enter character references in sentencing, because his 'good character' did not assist him to commit the offence. To address this gap, the Campaign seeks to amend section 21A(5A) the Act, to make it clear that character references cannot be used at all in sentencing for child sexual offence matters.

We firmly believe that in cases involving child sexual abuse, the concept of 'good character' should never serve as a mitigating factor in sentencing. The unique nature of child sex offences – whereby perpetrators commonly rely on an outwardly good reputation to perpetrate heinous crimes; and a person's public reputation has very little to do with their propensity to offend behind closed doors – justifies a legislative amendment altogether removing the ability of character references to be considered in their sentencing. Altogether removing the ability of character references to be used in sentencing would ensure more just outcomes for victim-survivors of child sexual abuse.

www.fullstop.org.au

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We acknowledge the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.

Child sexual abuse is a pervasive issue in our society. 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.

If you have any questions in relation to the issues raised in this letter, please do not hesitate to contact either myself or Full Stop Australia's Head of Advocacy, Emily Dale, at

Yours faithfully,

Tara Hunter
Acting CEO
Full Stop Australia

Wednesday, 21 June 2023

To Whom it May Concern,

I am writing on behalf of Survivors & Mates Support Network (SAMSN), Australia's only specialist not-for-profit organisation dedicated to working with men who have experienced childhood sexual abuse and their families.

I am writing to express SAMSN's endorsement of the 'Your Reference Ain't Relevant' campaign (Campaign). The purpose of the Campaign is to remove altogether the ability of character references being considered in the sentencing of persons convicted of child sexual offences. Currently, character references can be used in some cases to lessen the sentence of persons convicted of child sexual offences.

Under s 21A (3) of the Crimes (Sentencing Procedure) Act 1999 (NSW) (the Act), an offender being 'a person of good character' (as shown by character references) is listed as one of several 'mitigating' factors that can be considered when a judge sentences them for a criminal offence. While section 21A(5A) of the Act creates an exception to the use of character references in sentencing for child sexual offence matters, where the 'good character' of an offender 'was of assistance to the offender in the commission of the offence,' this exception does not apply in all cases.

We firmly believe that in cases involving child sexual abuse, the concept of 'good character' should never serve as a mitigating factor in sentencing. Perpetrators of child sexual offences commonly groom the child, their families and carers by relying on their outwardly good reputation and public reputation to proceed to carry out the most heinous crimes against the child. This alone justifies legislative amendment. Altogether removing the ability of character references to be used in sentencing would ensure just outcomes for victim-survivors of child sexual abuse.

Child sexual abuse is a pervasive issue in our society. The recent Australian Child Maltreatment Study reported that almost one in four Australian adults over the age of 16 has experienced child sexual abuse. For 78% of these adults, the abuse occurred more than once. The impact of such abuse is profound, encompassing not only the offence 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 extend the depth of the impact of this abuse.

If you have any questions in relation to the issues raised in this letter, please do not hesitate to contact either myself or Prue Gregory, SAMSN's Policy, Advocacy & Stakeholder Relations Manager at [REDACTED]

Kind regards,



Craig Hughes-Cashmore
CEO



Clerk of the Parliaments
NSW Legislative Council
NSW Parliament House
6 Macquarie Street
Sydney NSW 2000

To whom it may concern,

RE: The 'Your Reference Ain't Relevant' campaign

I am writing on behalf of the Australian Childhood Foundation (the Foundation), a national not-for-profit organisation working to prevent abuse and exploitation of children and young people to express our support for the 'Your Reference Ain't Relevant' campaign.

This campaign is seeking to amend Section 21A(5A) of the Sentencing Procedure Act 1999 in New South Wales by removing any opportunity for offenders of sexual abuse of children to submit a good character reference.

People who sexually harm children often use what may be perceived as their good character to manipulate children, their parents, and the communities around them, meaning their “good character” is a false identity utilised solely to facilitate their abuse of others. Using good character references during sentencing allows this perceived and false character to undermine the lifelong harm they have chosen to forcefully impose on the most vulnerable members of society, children.

Sexual abuse of children is perpetrated by a broad range of offenders and affects individuals across all social, socio-economic, and cultural contexts, regardless of region, race, religion, or gender. The impacts of sexual abuse on children follow many survivors throughout their lives. The recent Australian Child Maltreatment Study revealed that almost one in four Australian adults over the age of 16 have experienced sexual abuse during their childhood and that 78 percent of these individuals experienced it more than once.

Children who have been sexually abused are more likely to experience adverse mental and physical health consequences. These children may also experience substantial absences from educational institutions, have difficulty developing safe friendships and relationships and are far more likely to experience further violence in adulthood than the general population, particularly intimate-partner violence, and emotional abuse.

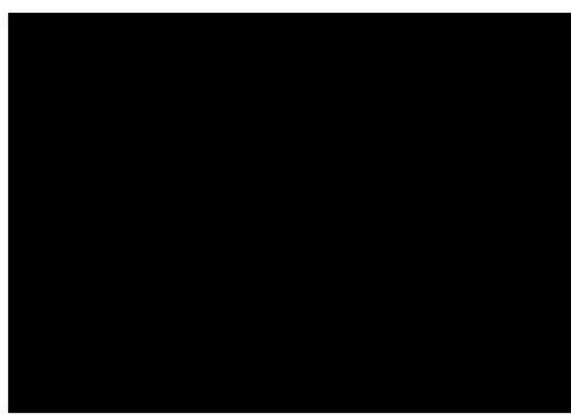
Those who sexually abuse and victimise children decide to do so without thought and/or consideration of the impact of their behaviour on the child at the time or how it influences the trajectory of that child's life and the people around them.

There should be no opportunity for "good character" to be used to mitigate how the court views their sentencing decisions to harm a child or children.

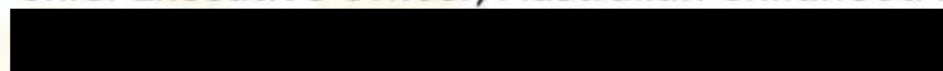
The Foundation fully supports Harrison James and Jarad Grice's call to amend Section 21A(5A) of the Sentencing Procedure Act 1999 by removing the words, "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offense." We appreciate the opportunity to support the ***'Your Reference Ain't Relevant'*** campaign.

Please do not hesitate to contact me should you require any further information.

Sincerely,



Dr Joe Tucci
Chief Executive Officer, Australian Childhood Foundation





12 September 2023

To whom it may concern,

The Survivor Hub would like to express our complete support for Harrison James and Jarad Grice's **'Your Reference Ain't Relevant'** campaign.

The Survivor Hub is a survivor-led initiative, harnessing our knowledge and lived experiences to support, inform and empower people impacted by sexual assault. We provide peer support groups to survivors across New South Wales, Victoria and online.

The 'Your Reference Ain't Relevant' campaign seeks to remove statutory provisions that may allow, in any circumstances, the consideration of good character references in sentencing of child sexual abuse matters. Specifically, amendments are sought to s 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), as the wording of the section in its current form, provides a loophole that allows the court to consider good character evidence in child sexual abuse matters provided that the 'good character' did not assist in the commission of the offence. We strongly believe that s 21A(5A) as it currently stands, is logically flawed.

The Australian Child Maltreatment study (Haslam et al. 2023) found that almost one in four adults over the age of 16 have experienced sexual abuse in their childhood. Survivors of child sexual abuse live with the consequences of what happened to them without their consent and for reasons that are not their fault. Those who are convicted of child sexual abuse matters will always receive sentences shorter than the lasting (often lifelong) impacts their victims have to live with as a result of the crime committed.

The reason we support this campaign is clear. By definition, those who perpetrate child sexual abuse are not of good character. It is not possible to harm a child and be of good character. It is important that this is reflected in our legislation. Further, perpetrators rely on being considered 'good character'. We know that they use this to infiltrate families and communities, win their trust and gain access to children.

By amending s 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* to remove any allowance for good character references to be considered in sentencing of child sexual abuse matters, we are one step closer to realising a legal system that may one day adequately recognise the immense harm child sexual abuse has on survivors, and the community as a whole.

We need to send a clear message of support and belief to the millions of survivors of child sexual abuse across Australia. Part of this, requires amendment of the legislation to allow for offenders to receive sentences commensurate to their actions and the harm caused.

THE SURVIVOR HUB



Dear Sir/Madam,

I am writing on behalf of the National Women's Safety Alliance, which connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women, providing consultation, research, and the collaborative development of expert policy advice to government. I am writing to express the Alliance's endorsement of the 'Your Reference Ain't Relevant' campaign.

The 'Your Reference Ain't Relevant' campaign aims to remove the provision for character references to be considered in the sentencing of persons convicted of child sexual offences. Currently character references can be used as mitigating factors in the sentencing of persons convicted of child sexual offences. This provision fails to acknowledge the interplay between an offender's agreeableness and their capacity to offend.

Under s 21A(3) *The Crimes (Sentencing Procedure) Act 1999*(NSW) (the Act), an offender being a 'person of good character' is one of several 'mitigating' factors that can be considered in sentencing. While section 21A(5A) of the Act creates an exception to the use of good character references in sentencing for child sexual offence matters, where the 'good character' of an offender 'was of assistance to the offender in the commission of the offence,' this exception does not apply in all cases. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse referred to a NSW Court of Appeals decision (*AH v R [2015] NSWCCA*) where a man who abused his nine year old stepdaughter could enter character references and sentencing because his 'good character' did not assist him to commit the offence. To address this gap, the campaign seeks to amend section 21A(5A) the Act, removing the potential for character references to be considered mitigating factors in sentencing.

The agreeableness of the perpetrator of child sexual abuse is intrinsic to remaining undetected and continuing to offend; shouting rounds, taking the bins out and offering assistance to others should be considered relevant in the context of their offending, not in mitigation.

If you have any questions in relation to the issues raised in this letter, please do not hesitate to contact me.

Yours faithfully,

Katherine Berney,

Executive Director

National Women's Safety Alliance

1/6/23

To whom it may concern,

I am writing on behalf of Blue Knot, a foundation that works with and advocates for survivors of complex trauma including those with experiences of child sexual abuse. We want to express our strong support for the **'Your Reference Ain't Relevant'** campaign. We believe that this campaign is crucial in ensuring the safety of children and young people by establishing effective systems and legislation.

Our primary concern lies with Section 21A(5A) of the Sentencing Procedure Act 1999 in New South Wales. While we acknowledge that the legislation recognizes that good character should not be taken into account as a mitigating factor, there is an exception that raises concern. Specifically, the provision states that good character can be considered if it was of assistance to the offender in the commission of the offence.

It is our firm belief that in cases involving sexual abuse, the notion of "good character" should never be a mitigating factor and should not impact sentencing. Child sexual offenders often present themselves as trusted members of the community, using their perceived good character to gain the trust of children, parents, and caregivers. Considering an offender's good character can undermine the severity of their crimes and perpetuate injustice.

Child sexual abuse is a pervasive issue in our society, affecting individuals from all walks of life, regardless of region, race, religion, socio-economic status, or gender. The impact of such abuse is profound, as it involves not only the offense itself but also the grooming process employed by offenders, the silence and shame endured by victims and survivors, and the complex relationships that often exist between offenders and their victims.

patron

Thomas Keneally AO

president

Dr Cathy Kezelman AM

ambassadors

Rida Aleem Khan

Jane Caro

Rose Parker

Christine Foster

Detective Chief Inspector Peter Fox

**Blue Knot Helpline and
Redress Support Service**

1300 657 380

**National Counselling and
Referral Service – Disability**

1800 421 468

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W blueknot.org.au

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Milsons Point NSW 1565

ABN 49 072 260 005

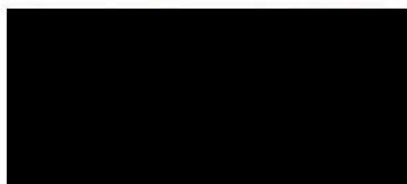
Furthermore, the current practice of considering an offender's good character and works as mitigating factors is offensive and minimizes the guilt they should bear. Offenders often manipulate their public image to groom, offend, and conceal their crimes. Providing character references without understanding this dynamic can inadvertently support the creation of a mask behind which offenders hide.

At Blue Knot, we fully support the call to amend Section 21A(5A) of the Sentencing Procedure Act 1999 by removing the words, "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offense." By doing so, we can ensure that the sentencing process remains fair, just, and focused on the protection and well-being of victims and survivors.

We appreciate the opportunity to lend our support to the **'Your Reference Ain't Relevant'** campaign and eagerly await the response of the Legislative Council. Should you require any further information, please feel free to contact us at ckezelman@blueknot.org.au

Thank you for your attention to this critical matter.

Sincerely,



Dr. Cathy Kezelman AM

President and Executive Director, Blue Knot Foundation

patron

Thomas Keneally AO

president

Dr Cathy Kezelman AM

ambassadors

Rida Aleem Khan

Jane Caro

Rose Parker

Christine Foster

Detective Chief Inspector Peter Fox

**Blue Knot Helpline and
Redress Support Service**

1300 657 380

**National Counselling and
Referral Service – Disability**

1800 421 468

contact

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ABN 49 072 260 005

31st May 2023

Clerk of the Parliaments, NSW Legislative Council
NSW Parliament House
6 Macquarie Street
Sydney NSW 2000

E-mail: council@parliament.nsw.gov.au

Cc/

The Hon. Benjamin Cameron Franklin (President of the Legislative Council)

[REDACTED]

The Hon. Rod Roberts (Deputy President of the Legislative Council)

[REDACTED]

Remove Good Character References for Paedophiles
in the Sentencing Procedure of Child Sexual Abuse Cases

To whom it may concern,

As an agency that works with, and advocates for, survivors of child sexual abuse and is focussed on ensuring that systems and legislation are established to increase the safety of children and young people, we are writing to provide support to the **'Your Reference Ain't Relevant'** campaign.

Section 21A(5A), Sentencing Procedure Act 1999 (NSW)

While we recognise that under Section 21A(5A) of the *Sentencing Procedure Act* 1999, NSW legislation includes a statement acknowledging that good character must not be taken into account as a mitigating factor, we are concerned that this includes an exception.

(5A) Special rules for child sexual offences. In determining the appropriate sentence for a child sexual offence, the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor **if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence.**

The “good character” and “good works” of child sex offenders is the very mask behind which the crimes are committed – and should always be considered ‘of assistance to the offender in the commission of the offence’.

It is our contention that in dealing with sexual abuse matters, the perceived “good character” should never be considered and should not impact on sentencing.

Child sexual offenders often present as trusted and good members of the community; while for other offender-types evidence of good character and conduct may be a redeeming feature, this very aspect of a sex offender's public image is about gaining the trust of children, parents and carers and the community generally. It allows offenders to offend.

We support the call to amend section 21A(5A) of the *Sentencing Procedure Act 1999*, by removing the words: 'if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence'.

The Impact of Child Sexual Abuse

Child sexual abuse is a hidden but significant problem in every community in Australia. As revealed by the first ever national Australian Child Maltreatment Study (Mathews et.al., 2023), 28% of Australians experience child sexual abuse (1 in 3 girls and 1 in 5 boys).

Child sexual abuse does not discriminate along lines of region, race, religion, socio-economic status or gender; it crosses all boundaries to impact every community. These impacts are a result of not just the nature and seriousness of the offence, but of the grooming process undertaken by offenders, the silence, shame and secrecy that victims and survivors live with, and the often-complex relationships with offenders (we know that most offenders are known, loved and trusted by the victim and his or her family).

Additionally, these impacts can be exacerbated by unjust and unfair outcomes (real or perceived) from the criminal justice system.

Sentencing Considerations

Courts have traditionally held that the otherwise "good character" and "good works" of an offender may carry some weight by way of mitigation of sentence. An offender's prior good works, good reputation, or absence of any earlier involvement with the criminal justice system are accepted as indicative of good character, and as such warrant consideration in sentencing.

For victims and survivors of sexual abuse, it is offensive and akin to alleviating guilt and responsibility, if an offender's "good" character is presented as a mitigating factor. Those providing character references, do so without understanding how offenders use their public image to groom, offend and cover their offences.

Sex Offenders

Child sex offenders actively seek access to children and the opportunity to be alone with them. Contrary to the common "stranger-danger" myth, child sex offenders are rarely strangers; at least 90% of sexually abused children are abused by someone the child and/or family knows and trusts.

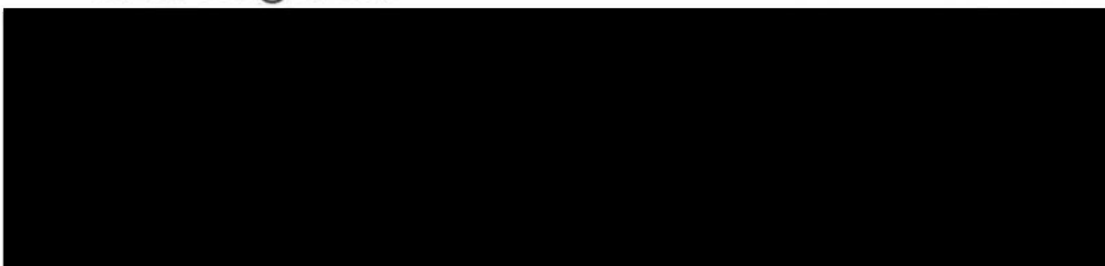
While some sexual abuse is opportunistic, most children are groomed and lured into situations where they are vulnerable to abuse. Common grooming strategies include elements of being perceived as of "good character", such as:

- Befriending parents, particularly single parents, to gain access to their children.
- Offering babysitting services to busy parents or guardians.
- Taking jobs and participating in community events that involve children.
- Attending sporting events for children.
- Offering to coach children's sports.
- Volunteering in youth organisations.
- Offering to chaperone overnight trips.

Our concern is that, realistically, under Section 21A(5A) a court may take into consideration the "good character" of an offender simply because the provided reference may not be considered directly related to the offence before the court. We strongly argue that any reference asserting "good character" is directly related to the creation of the mask behind which the offender and their offending hides.

We are grateful for the opportunity to provide our support for the petitioners of the 'Your Reference Ain't Relevant' campaign and look forward to the response of the Legislative Council. We can be contacted on research@bravehearts.org.au if any further information is required.

Kind Regards,



Alison Geale
CEO

Carol Ronken
Director of Research



20/07/2023

To Whom It May Concern,

My name is Adam Washbourne, and I am writing this letter on behalf of the members of FACAA (Fighters Against Child Abuse Australia), a fully registered Australian charity with the sole focus of ending child abuse in Australia once and for all. I am writing this to express FACAA's wholehearted endorsement of the 'Your Reference Ain't Relevant' campaign developed by Harrison James and Jarad Grice.

The campaign seeks to remove the consideration of character references in the sentencing of individuals convicted of child sexual offenses. Currently, character references can be used to mitigate the sentences of such offenders.

Section 21A(3) of the Crimes (Sentencing Procedure) Act 1999 (NSW) allows the consideration of an offender's "good character" based on character references as a mitigating factor during sentencing.

To FACAA and our members, the concept of child abusers being called "people of good character" is absolutely abhorrent. No matter who someone once was before they committed their abhorrent crimes, the moment they crossed that line to forever shatter the life of an innocent, vulnerable child. They are no longer anything resembling a person of good character.

To address this issue, the campaign aims to amend section 21A(5A) of the Act, making it explicit that character references cannot be considered in sentencing for child sexual offense matters. The previous NSW government in collaboration with several charities including FACAA removed character references for child sexual abuse being used in consideration of guilt. This campaign would continue this action by completely removing of all character references for any child abuse cases, as stated by the Your Reference Ain't Relevant Campaign.

In our everyday work, FACAA see firsthand the lifelong effects of child abuse upon its victim-survivors. We also see the re-traumatising effects of our legal system on victim-survivors of child abuse. Sitting and having to listen to a parade of people singing the praises of their convicted abusers to lessen the abuser's sentence is nothing short of heartbreaking.

By removing the use of character references in sentencing we will see victim-survivors of child sexual abuse far less traumatised by our legal process, which we believe will lead to more convictions and less abusers on the streets.

FACAA fully supports the 'Your Reference Ain't Relevant' campaign and believes that this legislative amendment is crucial in achieving justice for survivors, lowering instances of child abuse and will help to restore the public's long-lost faith in our legal system. We applaud the campaign's efforts and stand together with Harrison and Jarad in the fight against child sexual abuse.

Should anyone have any concerns about the campaign or wish to discuss FACAA's support further please do not hesitate to reach out to me at [REDACTED] and I will be happy to discuss any aspect of this letter or my support for Harrison and his campaign.

Kindest regards



Adam Washbourne
President Fighters against child abuse Australia
[REDACTED] www.facaaus.org

28/12/23

NAPCAN

PREVENT CHILD ABUSE & NEGLECT

Leesa Waters
CEO, NAPCAN
PO Box K241 Haymarket NSW 1240

This letter acknowledges NAPCAN’s wholehearted support of the ‘Your Reference Ain’t Relevant’ campaign, victim-survivors of child sexual abuse and Mr James and Mr Grice. This campaign advocates for legislative change with proposed amendments to section 21A(5A) of the Sentencing Procedure Act 1999 (NSW) (the Act) to remove the wording "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence" and urges the Government to eliminate good character references as a provision for convicted paedophiles during sentencing.

There are myriad reasons for the problematic nature of good character references upholding the image of child sexual abuse perpetrators in our criminal justice system. Namely, that the very nature of this crime is built upon indicators of ill character; that of manipulation, predatory behaviours and grooming by presenting as a trustworthy adult. NAPCAN is well versed in the research surrounding the rates and effects of child sexual abuse. We know from the land-mark Australian Child Maltreatment Study that 25.7% of Australians aged 16-24 have experienced child sexual abuse, 78% of these children experienced it more than once.

At NAPCAN we believe *every child in every community needs a fair go*. NAPCAN’s concern is that while good character references for perpetrators of child sexual abuse remain in the criminal justice system it will further harm and re-traumatise victim-survivors of abuse which is not conducive to healing. There should no longer be space in our criminal justice system for a person’s public-facing image to defend their sexual crimes against children.

By this letter of support, we join the campaign ‘Your Reference Ain’t Relevant’ in urging the Government to amend its legislation inline with the suggested requests by Mr James and Mr Grice throughout all States and Territories.

Regards,

Leesa Waters, CEO





05 December 2023

RE: Amendment to section 21A(5A) of the Sentencing Procedure Act 1999 (NSW)

To whom it may concern,

We write on behalf of Life Without Barriers, a not-for profit social purpose organization providing services for, children, young people and families, people with disability, people seeking asylum and refugee status and services for older Australians. We provide services in all states and territories of Australia through a workforce of approximately 13,000 employees and carers. In NSW, Life Without Barriers has provided support for thousands of children in the areas of child protection and family support services.

This letter extends our support for the '*Your Reference Ain't Relevant*' campaign – a united effort led by Harrison James and Jared Grice to remove a statutory provision in Section 21A(5A) of the *Sentencing Procedure Act 1999* (NSW) which currently enables a character reference to be considered as a mitigating factor for convicted offenders in child sexual abuse matters.

Over the past two decades of delivering services to children, we have seen first-hand the harm and long-term trauma child sexual abuse inflicts, the impacts of which have been nationally evidenced and recorded, including during the Royal Commission into Institutional Responses to Child Sexual Abuse. There is no doubt about the escalating and concerning prevalence of child sexual abuse in Australia. The *Australian Child Maltreatment Study* (ACMS), reported that around 28.5% of Australians experienced child sexual abuse. However, as a state we are falling behind in our judicial responses to these offences. In a report examining fourteen-year trends in Criminal Justice responses to Child Sexual Abuse in NSW (Cashmere, Taylor and Parkinson 2019), only 12% of reported offences resulted in a conviction. As a society, we must do better.

There are existing barriers that prevent children from reporting abuse now and character references as a mitigating factor for an offender are undoubtedly serving the offender not the victims in these cases. This statute may discourage victims from disclosing and further places the benefit of the court on the offender. The statute suggests we as a state are pre-disposed to seeking every opportunity to minimize the criminal act of sexual abuse of children. The *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* clearly outlines the roles of state courts and its powers to protect children and young people and the best demonstration of a progressive society is its ability to change laws that do not serve the community. We seek the removal of this statute.

Thank you in consideration.


Claire Robbs
Chief Executive


Ben Spence
Executive Director, Child Youth and Family Services NSW

7/11/2023

To Whom it may concern,

Amendment to Section 34A (b) in the Crimes Act of 2005

The Domestic Violence Crisis Service (DVCS) is a non-government, not-for-profit specialist domestic and family violence service that seeks to reduce violence and abuse in relationships. We provide crisis and long-term support services to help break the domestic and family violence cycle. We are here to support people, both during and after crisis situations as well as support programs for those who use violence, with the aim of bringing about change. DVCS has been providing services to the Canberra community since 1988, with the initial focus primarily being on crisis intervention. We have grown and evolved over 35 years into a holistic provider of domestic and family violence support services. Our services include a 24/7 telephone crisis counselling service, access to emergency accommodation, help with legal and court matters, support programs and training and education. Our vision is a world free from violence and abuse.

DVCS is writing in support of the "Your Reference Ain't Relevant" campaign to remove the ability for people sentenced for child sexual offences to have references consider.

Currently the provision allows for those "if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence" to utilise character references. This is an outdated notion of how child sexual offences occur, those who use violence against children always use their power and status to prey on the vulnerability of a child. We understand the utilisation of grooming not just of the child whom offences occur against but also of the people surrounding that child and with the recent Australian Child Maltreatment Study (ACMS) finding 1 in 4 Australians have experienced child sexual abuse we must do more to not only prevent this from occurring but holding accountable the people in our community who choose to offend against children. This includes removing the utilisation of good character references in all sentencing processes.

This sends a clear message to our community and it sends a message to all survivors of child sexual assault that it doesn't matter who it was, what standing they had in their community, what they did was against the law and they will be held accountable on the basis of the offence they committed and the harm they caused.



Sue Webeck

Chief Executive Officer

Domestic Violence Crisis Service



**National Women's
Safety Alliance**

Level 3, 71 Northbourne Ave,
Canberra City 2601
P | 02 6185 2000
E | policy@nwsa.org.au
W | www.nwsa.org.au

Dear Sir/Madam,

I am writing on behalf of the National Women's Safety Alliance, which connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women, providing consultation, research, and the collaborative development of expert policy advice to government. I am writing to express the Alliance's endorsement of the 'Your Reference Ain't Relevant' campaign.

The 'Your Reference Ain't Relevant' campaign aims to remove the provision for character references to be considered in the sentencing of persons convicted of child sexual offences. Currently character references can be used as mitigating factors in the sentencing of persons convicted of child sexual offences. This provision fails to acknowledge the interplay between an offender's agreeableness and their capacity to offend.

Under section 34A(b) of the Crimes (Sentencing) Act 2005 (the Act), a certain category of offenders being a 'person of good character' is one of several 'mitigating' factors that can be considered in sentencing. Although the degree to which a character reference can be used in child sexual offence matters in the ACT is limited, perpetrators such as step parents, siblings, relatives or friends – who didn't use their so-called "good standing" to gain access to their victim – are well within their right to call on references, at the court's discretion.

The agreeableness of the perpetrator of child sexual abuse is intrinsic to remaining undetected and continuing to offend; shouting rounds, taking the bins out and offering assistance to others should be considered relevant in the context of their offending, not in mitigation. It's time for society to recognise that perpetrators of child sexual abuse often hide behind a facade of 'good character'.

The National Women's Safety Alliance supports 'Your Reference Ain't Relevant' campaign's request that the ACT Legislative Assembly to enact a simple amendment to section 34A (b) of the Crimes (Sentencing) Act 2005, by deleting the words "to the extent that the offender's good character enabled the offender to commit the offence."

If you have any questions in relation to the issues raised in this letter, please do not hesitate to contact me.

Yours faithfully,

Katherine Berney,

Executive Director

National Women's Safety Alliance

8th December 2023

Andrew Braddock
GPO Box 1020
Canberra ACT 2601
E-mail: braddock@parliament.act.gov.au
Cc/-

Remove the Provision of Good Character References for Paedophiles
in the Sentencing Procedure of Child Sexual Abuse Cases

Dear Mr Braddock,

As an agency that works with, and advocates for, survivors of child sexual abuse and is focussed on ensuring that systems and legislation are established to increase the safety of children and young people, we are writing to provide support to the **'Your Reference Ain't Relevant'** campaign.

Section 34A (b) of the Crimes (Sentencing) Act 2005 (ACT)

While we recognise that under Section 34A (b) of the Crimes (Sentencing) Act 2005, ACT legislation includes a statement acknowledging that good character must not be taken into account as a mitigating factor, we are concerned that this includes an exception.

(S34A (b)) must not reduce the severity of a sentence it would otherwise have imposed on an offender because the offender has good character, **to the extent that the offender's good character enabled the offender to commit the offence.**

The "good character" and "good works" of child sex offenders is the very mask behind which the crimes are committed – and should always be considered 'of assistance to the offender in the commission of the offence'.

It is our contention that in dealing with sexual abuse matters, the perceived "good character" should never be considered and should not impact on sentencing.

Child sexual offenders often present as trusted and good members of the community; while for other offender-types evidence of good character and conduct may be a redeeming feature, this very aspect of a sex offender's public image is about gaining the trust of children, parents and carers and the community generally. It allows offenders to offend.

We support the call to amend Section 34A (b) of the Crimes (Sentencing) Act 2005, by removing the words: "to the extent that the offender's good character enabled the offender to commit the offence."

The Impact of Child Sexual Abuse

Child sexual abuse is a hidden but significant problem in every community in Australia. As revealed by the first ever national Australian Child Maltreatment Study (Mathews et.al., 2023), 28% of Australians experience child sexual abuse (1 in 3 girls and 1 in 5 boys).

Child sexual abuse does not discriminate along lines of region, race, religion, socio-economic status or gender; it crosses all boundaries to impact every community. These impacts are a result of not just the nature and seriousness of the offence, but of the grooming process undertaken by offenders, the silence, shame and secrecy that victims and survivors live with, and the often-complex relationships with offenders (we know that most offenders are known, loved and trusted by the victim and his or her family).

Additionally, these impacts can be exacerbated by unjust and unfair outcomes (real or perceived) from the criminal justice system.

Sentencing Considerations

Courts have traditionally held that the otherwise "good character" and "good works" of an offender may carry some weight by way of mitigation of sentence. An offender's prior good works, good reputation, or absence of any earlier involvement with the criminal justice system are accepted as indicative of good character, and as such warrant consideration in sentencing.

For victims and survivors of sexual abuse, it is offensive and akin to alleviating guilt and responsibility, if an offender's "good" character is presented as a mitigating factor. Those providing character references, do so without understanding how offenders use their public image to groom, offend and cover their offences.

Sex Offenders

Child sex offenders actively seek access to children and the opportunity to be alone with them. Contrary to the common "stranger-danger" myth, child sex offenders are rarely strangers; at least 90% of sexually abused children are abused by someone the child and/or family knows and trusts.

While some sexual abuse is opportunistic, most children are groomed and lured into situations where they are vulnerable to abuse. Common grooming strategies include elements of being perceived as of "good character", such as:

- Befriending parents, particularly single parents, to gain access to their children.

- Offering babysitting services to busy parents or guardians.
- Taking jobs and participating in community events that involve children.
- Attending sporting events for children.
- Offering to coach children's sports.
- Volunteering in youth organisations.
- Offering to chaperone overnight trips.

Our concern is that, realistically, under Section 34A (b) a court may take into consideration the "good character" of an offender simply because the provided reference may not be considered directly related to the offence before the court. We strongly argue that any reference asserting "good character" is directly related to the creation of the mask behind which the offender and their offending hides.

We are grateful for the opportunity to provide our support for the petitioners of the 'Your Reference Ain't Relevant' campaign and look forward to the response of the Members of the Legislative Assembly. We can be contacted on research@bravehearts.org.au if any further information is required.

Kind Regards,



Alison Geale
CEO



Carol Ronken
Director of Research

November 20th 2023

To the Speaker and Members of the ACT Legislative Assembly,



PO Box 3805
Weston Creek ACT 2611

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Business 02 6287 3618

Text Only 0488 586 518
for hearing impaired & SMS messages

www.crcc.org.au
crcc@crcc.org.au
ABN 68 076 467 629

Amendment of Section 34A(b) in the Crimes Act of 2005, in support of the 'Your Reference Ain't Relevant' campaign.

The Canberra Rape Crisis Centre (CRCC), is a non government, not for profit, feminist organisation working to eliminate sexual violence against women, young people, children, families and men since 1976.

The Canberra Rape Crisis Centre's vision statement is to be an active, inclusive voice and presence against all forms of sexual violence, until we are no longer needed. CRCC works to respond to, and prevent all forms of sexual violence and abuse, and works collaboratively within service provision systems in the ACT to ensure that victims of sexual assault and their supporters receive appropriate services that are grounded in international guidelines for best practice in the treatment of sexual assault and child sexual assault trauma.

The Canberra Rape Crisis Centre provides crisis and ongoing support to victim/survivors of sexual assault, their families and supporters. This support includes a crisis line, 24 hour call out support to police and hospital, advocacy, community engagement and education, and trauma informed ongoing counselling. CRCC supports victim survivors through the lifelong impact of child sexual abuse, and supports them through an often retraumatising legal system.

The Canberra Rape Crisis Centre is writing in support of Harrison James and Jarad Grice's campaign 'Your Reference Ain't Relevant', in which they propose amendments to Section 34A(b) of the *Crimes Act* (2005). The goal of this campaign is to remove from legislation any leniency for convicted child sex offenders to submit a good character reference, which have in some cases lessened the sentence of convicted sexual offenders.

The campaigns proposed amendment removes any opportunity for perpetrators of child sexual abuse to submit a good character reference at sentencing. CRCC strongly believes that in all cases of sexual violence, and particularly child sexual abuse the use of 'good character' allows the portrayed and perceived character of perpetrators to continue to undermine the lifelong harm and trauma they have imposed on the lives of vulnerable members of society.

People with 'good character' do not harm, coerce, isolate, groom and traumatise children. People with 'good character' do not infiltrate families and communities, use manipulative behaviours to gain trust and access to children.

Perpetrators of sexual violence rely on manipulation. They rely on gaining the trust of the families and communities of their victim/survivors in order to access these vulnerable individuals. Being perceived as a 'good person' is a purposeful tool used by perpetrators in the overall grooming process associated with child sexual abuse. Good character references minimise and invalidate the harrowing experiences of victim/survivors and add to the retraumatising effect which our legal system has on those who have experienced sexual violence

The Canberra Rape Crisis Centre supports the 'Your Reference Ain't Relevant' campaign, and appreciates the opportunity to support the campaign. We eagerly await response from the ACT Legislative Assembly.

If you require any further information or would like to discuss the critical content of this letter, please do not hesitate to contact us at crcc@crcc.org.au.

Kind Regards,
Lauren Clarke

Crisis Program Coordinator
Canberra Rape Crisis Centre (CRCC)
Service Assisting Male Survivors of Sexual Assault (SAMSSA)



5 December 2023

To whom this may concern,

AMENDMENT TO S 34A OF THE *CRIMES (SENTENCING) ACT 2005 (ACT)*

I am writing in relation to Harrison James' and Jarad Grice's campaign, 'Your Reference Ain't Relevant', and to provide my support for a government review into the use of good character evidence in child sexual offence matters in the ACT.

Sexual offending against children and young people remains pervasive in our community. The impacts of this offending on victim-survivors are profound and life-long, often extending to their families and the community at large. It is vitally important that sentencing in the criminal justice system provides an appropriate and effective response which properly reflects the harm and seriousness of this offending.

In 2018, section 34A of the *Crimes (Sentencing) Act 2005* was introduced to implement the Royal Commission into Institutional Responses to Child Sexual Abuse's recommendation to exclude good character as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending. The Royal Commission noted that an 'offender may have used his or her reputation and good character to facilitate the grooming and sexual abuse of a child and to mask their behaviour', sometimes allowing 'them to continue to offend despite complaints or allegations being made'.¹

In 2021, the ACT Sexual Assault Prevention and Response Steering Committee heard from victim-survivors in the ACT who reflected that their experience of the justice system, including the sentencing process, was extremely harrowing. These individuals collectively stressed the need for the justice system to hold offenders to account, and send a message to the community that sexual violence is unacceptable. Accordingly, the Steering Committee's Report, *Listen. Take Action to Prevent, Believe and Heal*, recommended that the ACT Government undertake research and consider measures to improve victim-survivors' experiences of the criminal justice process, including by ensuring that victim-survivors are acknowledged and recognised throughout the process.

¹ Royal Commission, *Criminal Justice Report*, August 2017, Parts VII – X, p 288-292.



**VICTIMS OF CRIME
COMMISSIONER**

ACT Human Rights Commission

I acknowledge the significant harm caused to many victim-survivors by the sentencing process, and would welcome the opportunity to work with Government to review the use of good character evidence and the sentencing process in relation to child sexual offence matters.

Yours sincerely,

Heidi Yates

Victims of Crime Commissioner

ACT Human Rights Commission

P: (02) 6205 2222



23 November 2023

[REDACTED]

Dear Sir or Madam,

We are writing in response to the Confidential Discussion Paper issued in relation to the review of s 21A (5A) of the *Crimes (Sentencing Procedure) Act 1999*. We thank you for allowing us the opportunity to make this submission.

We write this submission in support of the proposed amendment which would remove the last 21 words from the current s21A(5A) so that the amended section would read:

(5A) Special rules for child sexual offences – In determining the appropriate sentence for a child sexual offence, the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor.

We make this submission for the following reasons:

1. Current legislation

I have been a community lawyer for nearly thirty years, working in legal centres in Darlinghurst/Kings Cross, Campbelltown and more recently as the Principal Lawyer of knowmore Legal Service. I am currently the Policy, Advocacy and Stakeholder Relations Manager at SAMSN. In my years of working with survivors of child sexual abuse, the one constant has been the offender gaining the trust of the victim/survivor and their family to assert power and authority enabling the sexual abuse of the child to occur. The offender whether in an institutional setting or within the family had been of 'good character,' someone to be trusted.

As is now known from the research commissioned by the Child Abuse Royal Commission, the enablers of child sexual abuse are:

- the good character of the offender which facilitated the contact with the child; and
- being in a position of trust and authority over a child and often their family.

The current legislation prevents good character references being used where the good character was a factor that assisted the offending. This would include situations for example within a church, school, scouts or a community organisation. It would exclude the situation of a family where the access to the child was because of the relationship to the child for example the child's grandfather.

However, it is our submission that making this distinction between the situations where the offence has occurred is flawed, leading to inconsistencies in applying the law and causing distress to victims/survivors and their families. The flaws in the current legislation are:

- It fails to acknowledge that grooming is a criminal offence in NSW.
- It allows for two classes of victims/survivors – those abused by someone who was a community



leader compared to someone who was abused within a family, where it was the relationship to the offender that was allegedly the enabler of the abuse.

- It allows for two classes of offenders – those who offended within an institution or community context and those who abused within a family or family like relationship eg a neighbour.
- It also allows for inconsistency where the same set of facts may see a Magistrate or Judge allow a good character reference in one situation but not in another.

The current law lacks certainty in its application.

As outlined above, it has been the good character of the offender whether within a community or family setting that has enabled the offence to occur. Following logically from this is the conclusion that good character is always of assistance to the offender in the commission of the offence.

2. The benefits of amending the legislation

The benefits of amending the legislation have been set out in the answer above. However, more importantly by amending the legislation, victims/survivors would see just outcomes. What victims/survivors are looking for is:

- Validation – that they are believed; and
- Vindication – the condemnation of the Court of what has happened.

We now know as a result of the Child Abuse Royal Commission, that grooming can often make survivors of child sexual abuse, feel complicit in the offending, even though they were children at the time.

Under the current law where good character is allowed by courts where the court is satisfied that the good character of the offender was not of assistance in the offence, the victim/survivor must hear what a 'good person' their offender otherwise was, reinforcing the feelings of being complicit.

At SAMSN we have heard from many survivors who have been through the criminal justice system and who have listened to good character references being read out at court, they have felt the severity of the crime has been diminished by these references, leaving them feeling they were not believed and somehow partly to blame.

3. Changing the reference to another term such as prior character

SAMSN acknowledges that using the term 'prior character' or 'pre-offending' character is far less emotionally charged than using the term 'good character.' However, it still fails to take into account that many offenders have no prior convictions, have no 'pre-offending' history thus allowing defence counsel to highlight this lack of any prior history to imply good character to reduce the sentence. We know that most child sex offenders are never caught and brought before the courts. The fact there is no prior offending history should not be seen as a factor in mitigation.

4. Not taking into account good character as a mitigating factor in all cases involving child sexual offences

For the reasons set out above SAMSN endorses the proposed amendment to this legislation. The current law allows good character references to be used in some situations. This law fosters a dual system for victims/survivors and for offenders and fails to provide certainty. The current law fails to

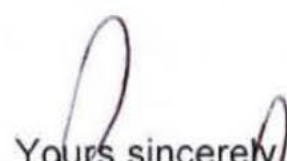


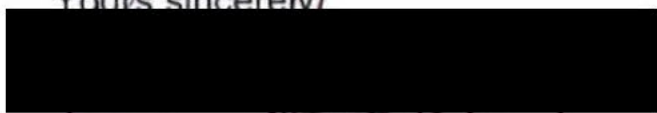
understand the enablers of child sex offending. The current law creates an artificial distinction between an offence that occurs in an institutional context and an offence that occurs within a family.

Not taking into account good character as a mitigating factor in all cases of child sex offences, would create good law.

However, more importantly, it would validate and vindicate the experiences of all victim/survivors – they have been believed, the crime against them has not been diminished.

Please do not hesitate to contact me should you require further information.


Yours sincerely,


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