

Good Character References in Sentencing

OUR POSITION:

Bravehearts advocates that the consideration of good character should be abolished in all cases of child sexual offences.

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 sex offenders to perpetrate their crimes.

Background

The Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) recommended against the use of good character references for people who have sexually abused children. Specifically, the recommendation stated that:

All state and territory governments (other than New South Wales and South Australia) should introduce legislation to provide that good character be excluded as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending, similar to that applying in New South Wales and South Australia

In 2023, survivors Harrison James and Jarad Grice began campaigning for good character references to be abolished from consideration during the sentencing of child sex offenders. The campaign, #YourReferenceAintRelevant, has garnered significant media support and has prompted reviews of legislation in several jurisdictions.

Bravehearts fully supports the call to abolish the use of good character references when sentencing child sex offenders.

Legislation Changes

Since the handing down of the RCIRCSA recommendations, it is noted that most jurisdictions have introduced a clause that excludes good character references "... where that good character facilitated the offending...".

We do not believe this goes far enough or that it recognises that perceived good character plays an instrumental role in child sex offending and grooming and contributes to the silence and secrecy that shrouds child sexual abuse.

Child Sexual Abuse and Exploitation

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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 sex offenders to perpetrate their crimes.

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. Impacts of sexual abuse and exploitation 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).

But what we know about child sex offenders suggests that the 'perceived good character' is integral to the offences. These offences are often perpetrated under a guise of good character and reputation, and similarly to child sexual offences, this perceived status of the offender as a good person impacts on victims and survivors in multiple ways: from decreasing the likelihood of disclosure, to facilitating ongoing and persistent harms, to disbelief when a survivor bravely speaks out, and to ongoing trauma.

Good Character References in Sentencing

Courts have traditionally held that the otherwise perceived "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. This may be true for some offence types, but for child sex offences, as well as other sexual offences against vulnerable persons or adults, and domestic and family violence, where perceived good character is an integral component of grooming, the offending itself, and of the silence and secrecy surrounding it, the use of good character references should be abolished.

We would strongly argue that removing 'good character' references for consideration in any child sexual offence, is the only trauma-informed option that demonstrates and understanding of the dynamics of offending (modus operandi in gaining trust from the child, family, community; impact on silencing and a victim speaking out) and the long-term impacts on the victims.

Common arguments for the use of good character references are that they are important for understanding the individual who may have no previous offences, they assist in assessing the likelihood of re-offending, and

Individuals with no prior record of offending

Many individuals offend for years before they may be caught and receive a conviction. To suggest that an offender's lack of previous convictions or lack of contact with the criminal justice system (prior to or after known abuse) should in any way be considered a mitigating factor is of concern.

Research consistently tells us that only a small percentage of survivors will disclose, typically around 10%. Offenders may be sexually harming children for years without discovery.

Recent research reviewing studies relating to disclosure of child sexual abuse has shown that barriers to disclosure continue to outweigh facilitators. As we know from evidence gathered through the Royal Commission into Institutional Responses to Child Sexual Abuse, many victims and survivors do not disclose for many years after the abuse. Among survivors participating in private sessions for the Royal Commission, 57% said they did not disclose about the abuse until they were an adult. Further, survivors took on average, 23.9 years to disclose the abuse, with men taking longer to disclose than women (25.7 years for men and 20.6 years for women) (Royal Commission, 2017).

More than 140,000 sexual assaults (including assaults of adults and children) were reported to Australian police in the 10 years to 2017. Just under 30% of sexual assault reports led to an arrest, summons, formal caution or other legal action. Another 50,800 investigations – more than 35% of reported sexual assaults – remain unsolved (cited in Millstead & McDonald, 2017).

Prospect of rehabilitation

A good character reference is of little use in determining prospects of rehabilitation. The notion that an individual is of perceived good character, aside from the current offence, and that the offence is simply ‘out of character’ is a problematic when considering prospects of rehabilitation or likelihood of future offending.

Those who often provide character references, have little knowledge or understanding of the role that character and reputation play in child sex offending or grooming and offending processes. For most who provide these references, the ‘alleged’ offending is truly seen as out of character and an aberration from the person they know.

Psychological reports and risk assessments, although themselves not without issue, would be a more reliable and valid indicator of both future offending and rehabilitative projections.

Those with good character deserve lesser sentences

Punishment should be based on the offence committed, not the perceived character of the person who committed the offence; the presumption behind this premise is that “offenders are being sentenced not for the offence but for their moral worth”.

For victims and survivors of sexual abuse, it is 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.

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.

Bravehearts Position

Bravehearts advocates that the consideration of good character should be abolished in all cases of child sexual offences.

We would argue that taking into consideration perceived good behaviour (prior to or after a known offence), is based on a lack of understanding around the dynamics of child sexual abuse. We would also note that the use of good character references in other matters involving sexual offences against other vulnerable individuals, sexual or domestic/family violence generally or where there is a breach of trust or authority, the use of good character references is similarly problematic.

However, we are supportive of other factors that are more relevant to the crime and to sentencing being considered (e.g., acknowledgment of responsibility, willingness to proactively engage in treatment, admissions, or mental illness)

References

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