

COMMUNITY LEGAL CENTRES TASMANIA

5 July 2026

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

via email: haveyoursay@justice.tas.gov.au

To the Department of Justice,

Re: Sentencing Amendment (Good Character) Bill 2026

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sentencing Amendment (Good Character) Bill 2026* ('the Bill').¹ We support the abolishing of good character as a stand-alone mitigatory factor, but strongly recommend that good character remain admissible where it addresses other sentencing factors such as rehabilitation, remorse and/or risk of re-offending.²

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located through Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

BACKGROUND

Section 9 of the *Sentencing Act 1997* (Tas) ('the Act') provide that a court must have regard to the offender's character when determining whether to impose a conviction:³

9. Conviction or non-conviction

In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including –

- (a) the nature and circumstances of the offence; and*
- (b) the offender's antecedents and character; and*
- (c) the impact that a conviction would have on the offender's economic or social wellbeing or employment prospects.*

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² The Tasmanian Aboriginal Legal Service is a member of CLC Tas. However, they do not support the abolishing of good character and will provide their own submission to the draft Bill. Women's Legal Service Tasmania is also a member of CLC Tas. They have sought and been granted an extension of time to respond to 13th July 2026 and will provide their own submission to the draft Bill.

³ See, also section 17 of the *Sentencing Act 1997* (Tas) which provides that a court may take character into account when determining eligibility for parole.

Abolishing ‘good character’ where it assisted in commission of sexual offence

Both in statute and in common law good character can be a significant mitigating factor, resulting in an “offender receiving a non-custodial sentence for a crime serious enough in itself to warrant a sentence of imprisonment, or where the offence is very serious, a much-reduced sentence of imprisonment”.⁴

In 2016, following a recommendation from the *Royal Commission into Institutional Responses to Child Sexual Abuse*, a Bill was introduced to ensure that an offender’s good character could not be considered if it had assisted the offender to commit a sexual offence.⁵ In the Second Reading Speech, the relevant Minister observed:⁶

Good character is usually a mitigating circumstance, meaning that it counts towards a lower sentence than would otherwise be imposed. Good character is not usually given much weight where an offender is being sentenced for sexual offences against children; however this bill modifies the existing law to ensure that courts do not give any weight to an offender's good character or lack of previous convictions where one or both of those assisted an offender in committing a sexual offence.

The Bill was subsequently passed with section 11A of the Act providing:

11A. Matters to be taken or not taken into account in sentencing certain sexual offenders

...

(2) In determining the appropriate sentence for an offender convicted of a sexual offence –

(a) the court is to take into account any aggravating circumstance in relation to the sexual offence; and

(b) the court is not to take into account the offender's good character or lack of previous convictions if the court is satisfied that the offender's alleged good character or lack of previous convictions was of assistance to the offender in the commission of the sexual offence.

Most Australian jurisdictions have introduced a similar reform.⁷

NSW abolishes ‘good character’ for sexual offences

In 2024, the New South Wales Attorney-General requested that the Sentencing Advisory Council review and report on the use of good character in sentencing. More than 160

⁴ Kate Warner, *Sentencing in Tasmania* (Federation Press: 2022), para. [3.514].

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Recommendations* (Report, December 2017), recommendation 74. Also see *Sentencing Amendment (Sexual Offences) Bill 2016*.

⁶ Parliament of Tasmania, Hansard, House of Assembly 25 August 2016. The Honourable Michael Ferguson

⁷ Section 5AA of the *Sentencing Act 1991* (Vic); section 34A of the *Crimes (Sentencing) Act 2005* (ACT); section 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW); section 9(6A) of the *Penalties and Sentences Act 1992* (Qld); section 5(3A) of the *Sentencing Act 1995* (NT); section 11(4) of the *Sentencing Act 2017* (SA).

submissions were received in response to a consultation paper, with the final report recommending that good character be abolished as a mitigating factor in sentencing.⁸

In February 2026, following the tabling of a Bill by the Government, the NSW parliament abolished 'good character' as a mitigating factor in sentencing for all sexual offences.⁹ Relevantly, the reform is not limited to sexual offences where an offender was 'assisted' by their good character with section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) relevantly providing:

21A Aggravating, mitigating and other factors in sentencing

...

(3) Mitigating factors *The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows—*

- (a) the injury, emotional harm, loss or damage caused by the offence was not substantial,*
- (b) the offence was not part of a planned or organised criminal activity,*
- (c) the offender was provoked by the victim,*
- (d) the offender was acting under duress,*
- (e) the offender does not have any record (or any significant record) of previous convictions,*
- (f) the offender was a person of good character,*
- (g) the offender is unlikely to re-offend,*
- (h) the offender has good prospects of rehabilitation, whether by reason of the offender's age or otherwise,*
- (i) the remorse shown by the offender for the offence, but only if—*
 - (i) the offender has provided evidence that he or she has accepted responsibility for his or her actions, and*
 - (ii) the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for such injury, loss or damage (or both),*
- (j) the offender was not fully aware of the consequences of his or her actions because of the offender's age or any disability,*
- (k) a plea of guilty by the offender (as provided by section 22 or Division 1A),*
- (l) the degree of pre-trial disclosure by the defence (as provided by section 22A),*
- (m) assistance by the offender to law enforcement authorities (as provided by section 23),*
- (n) an offer to plead guilty to a different offence where the offer is not accepted, the offender did not plead guilty to the offence and the offender is subsequently found guilty of that offence or a reasonably equivalent offence (this circumstance, among others, is provided for by section 25E (1)).*
- (3A) Despite subsection (3)(f), the court, having taken into account the good character of the offender, may decide to give no weight to this factor in determining the appropriate sentence for the offence.*

...

(5A) Special rules for child sexual offences *In determining the appropriate sentence for a child sexual offence, the lack of previous convictions of an*

⁸ New South Wales Sentencing Council, *Good Character at Sentencing* (Report, December 2024) [1.37]-[1.38], [3.2].

⁹ *Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing) Bill 2026* (NSW).

offender is not to be taken into account as a mitigating factor if the court is satisfied that this factor was of assistance to the offender in the commission of the offence.

*(5AA) **Special rules for sexual offences** Despite subsection (3)(f), in determining the appropriate sentence for a sexual offence, the good character of the offender must not be considered as a mitigating factor.*

(5AB) To avoid doubt, the principle or rule of common law that requires or allows good character to be considered by a court as a mitigating factor in determining the appropriate sentence for a sexual offence is abolished.

(5AC) A court, in determining the appropriate sentence for a sexual offence, must not consider evidence adduced solely for the purpose of establishing good character.

(5AD) Subsection (5AC) does not prevent a court from considering evidence adduced for another purpose or principle of, or factor in, sentencing.

...

The effect of the NSW reform is that judicial officers are provided with less discretion in sexual offence sentencing with the provision prescribing when good character must be ignored or given no weight.

Why good character as a stand-alone mitigatory factor should be abolished

There are a broad range of aggravating and mitigatory factors that judicial officers will take into account when sentencing an offender. Examples include:¹⁰

Circumstances of the Offence

- Seriousness of the offence
- Prevalence of the type of offence
- Impact on victim – taking into account age/circumstances of victim
- Premeditation
- Degree of participation – leader, minor role?

Circumstances of the Offender

- Prior Convictions, including response to previous orders
- Plea of guilty
- Remorse (demonstrated for example by co-operation with the Police)
- Character
- Background, including cultural background
- Age
- Means
- Physical condition/ mental capacity
- Prospects for rehabilitation
- Deterrent effect that any sentence may have on the person
- Alcohol/drugs but only to show out of normal character
- Parity with like offenders

¹⁰ Courts and Tribunals Tasmania, 'General Sentencing Principles'. As found at https://www.courts.tas.gov.au/tasmanian_court_scenarios/general_sentencing_principles (accessed 19 June 2026).

- Special hardship

If the Bill as drafted is passed, an offender will no longer be able to rely on ‘character’ alone to mitigate their sentence. An additional benefit is that transparency in decision-making will be improved with judicial officers required to point to a lack of previous convictions or a low risk of re-offending or good prospects of rehabilitation rather than simply relying on nebulous ‘good character’.

In concluding that character references alone do not “add anything of value” to the sentencing process, the New South Wales Sentencing Council observed:¹¹

Good character is a vague and uncertain concept that takes a simplistic view of an offender, and rewards irrelevant good deeds and reputation. It is not a reliable predictor of an offender’s future behaviour. A finding that an offender was a person of otherwise good character does not, as a standalone conclusion, add anything of value to the sentencing process that cannot be addressed by other mitigating factors, or other considerations in sentencing.

An example of a character reference that -in our opinion- reinforces the finding of the NSW Sentencing Council was provided by former Prime Minister John Howard OM AC during the sentencing of former Cardinal Pell for historic child sexual abuse.¹² The reference read:¹³

Your Honour

This character reference is provided in the context of charges being dealt with in relation to Cardinal Pell.

I am aware he has been convicted of those charges: that an appeal against the conviction has been lodged and that he maintains his innocence in respect of these charges.

None of these matters alter my opinion of the Cardinal.

I have known Cardinal Pell for approximately 30 years.

We first became acquainted when he was, I think, an Assistant Bishop in the Archdiocese of Melbourne and, later still, Archbishop of Sydney.

Cardinal Pell is a person of both high intelligence and exemplary character.

Strength and sincerity have always been features of his personality.

¹¹ New South Wales Sentencing Council, *Good Character at Sentencing* (Report, December 2024) [3.11]-3.12].

¹² On appeal, the High Court of Australia unanimously upheld Cardinal Pell’s appeal and quashed his convictions on all five charges: *Pell v The Queen* [2020] HCA 12.

¹³ A copy of the Honourable John Howard OM AC’s complete reference is provided at Annexure A and was found at Aleks Devic, Revealed: The 10 people who wrote character references for George Pell, *Herald Sun*, 27 February 2019. As found at <https://www.heraldsun.com.au/news/law-order/revealed-the-10-people-who-wrote-character-references-for-george-pell/news-story/26736d95fcc99a5236861616eb13a008> (accessed 23 June 2026).

I have always found him to be lacking hypocrisy and cant.

In his chosen vocation he has frequently displayed much courage and held to his values and beliefs, irrespective of the prevailing wisdom of the time.

Cardinal Pell is a lively conversationalist who maintains a deep and objective interest in contemporary social and political issues.

It is my view that he has dedicated his life to his nation and his church.

Yours sincerely,

John Howard

Cardinal Pell's subsequent appeal to the High Court was successful and all convictions were quashed.¹⁴ Nevertheless, in the earlier sentencing of Cardinal Pell before the Victorian Supreme Court it is our view that the "exemplary character", "strength and sincerity" and being a "lively conversationalist" provided no assistance to the charges for which Cardinal Pell was being sentenced.

In the experience of our member centres, influential character references are generally more readily available to people of higher social standing who have the capacity to engage in 'good works'. For example, a single mother working irregular hours is unlikely to have the time to engage in volunteer work in which well-regarded community leaders could vouch for their good character. This can be compared to others, such as Cardinal Pell, who was able to obtain character references from a former Prime Minister, a Vice Chancellor of a University and Queens Counsel.¹⁵ As one academic has noted, character references create "a clear danger of inequitable treatment by privileging offenders with the means and opportunities to make a contribution to the community's welfare".¹⁶

The experience of our member centres mirrors that of organisations in other Australian States and Territories including the NSW Community Restorative Centre (CRC), a non-government organisation which has over 70 years' experience providing specialist support to people affected by the criminal justice system. In its submission to the NSW Sentencing Council's *Review of Good Character in Sentencing*, the CRC observed "In our decades of experience providing support to people affected by the criminal legal system, we hold that it is generally white, middle-class men who most benefit from prior good character considerations".¹⁷

We strongly believe that it is more relevant to the sentencing process that an offender has expressed remorse, made restitution and/or engaged with rehabilitation because they are all mitigatory factors that both provide vindication to a victim and improve the

¹⁴ *Pell v The Queen* [2020] HCA 12.

¹⁵ Australian Broadcasting Corporation, 'John Howard gives George Pell character reference for court hearing', 27 February 2019. As found at <https://www.abc.net.au/news/2019-02-27/archbishop-reviews-pells-melbourne-response-victims-come-forward/10852672> (accessed 23 June 2026).

¹⁶ Julian Roberts, *Punishing Persistent Offenders: Exploring Community and Offender Perspectives* (Oxford University Press, 2008) 110.

¹⁷ Community Restorative Centre, *Review of Good Character in Sentencing* (February 2025). As found at <https://sentencingcouncil.nsw.gov.au/documents/our-work/good-character/GC159.pdf> (accessed 23 June 2026).

chances that an offender will not re-offend. By removing character as a sentencing factor, more explicit weight will be attached to these considerations when sentencing an offender.

It is also worth emphasising that evidence of good character to demonstrate that the offender was acting out of character or that it was a one-off crime are addressed by other mitigatory factors including a lack of previous convictions. And age/disability will remain mitigatory factors without the need to rely on good character.

Whilst we support the abolishing of good character as a stand-alone mitigatory factor, we strongly believe that good character should remain admissible where it addresses other sentencing factors such as rehabilitation, remorse and/or risk of re-offending. However, as the proposed section 11AA(2) is currently drafted, it is arguable that all types of good character are abolished, with the sentencing court unable to rely on “the offender’s good character” or “evidence adduced for the purposes of establishing the good character of the offender”:

(2) In determining the appropriate sentence for an offender convicted of an offence, the court is not to take into account –
(a) the offender’s good character; or
(b) evidence adduced solely for the purposes of establishing the good character of the offender.

To remove the ambiguity and ensure that good character remains admissible in circumstances where it is relevant other sentencing factors, we recommend the removal of the proposed subsection 11AA(2)(a) (above) and an express acknowledgement -as was also recommended by the NSW Sentencing Advisory Council- that the section “does not otherwise affect the ability of the court to consider relevant evidence in relation to any other purpose or principle of, or factor in, sentencing”.¹⁸

In summary, the Bill’s abolishing of good character as a stand-alone mitigatory factor is supported. However, we strongly recommend that sentencing courts continue to be able to rely on good character where it is relevant to addressing other sentencing considerations.

If you have any queries, or we can be of further assistance, please do not hesitate to contact us.

Yours sincerely,



Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

¹⁸ New South Wales Sentencing Council, *Good Character at Sentencing* (Report, December 2024), recommendation 3.1.

Annexure A

Hon John Howard OM AC

26 February 2019

His Honour Chief Judge Kidd
County Court
MELBOURNE VIC 3000

Your Honour

Re George Cardinal Pell

This character reference is provided in the context of charges being dealt with in relation to Cardinal Pell.

I am aware he has been convicted of those charges; that an appeal against the conviction has been lodged and that he maintains his innocence in respect of these charges. None of these matters alter my opinion of the Cardinal.

I have known Cardinal Pell for approximately thirty years. We first became acquainted when he was, I think, an Assistant Bishop in the Archdiocese of Melbourne. Inevitably we became better known to each other after he became Archbishop of Melbourne and, later still, Archbishop of Sydney.

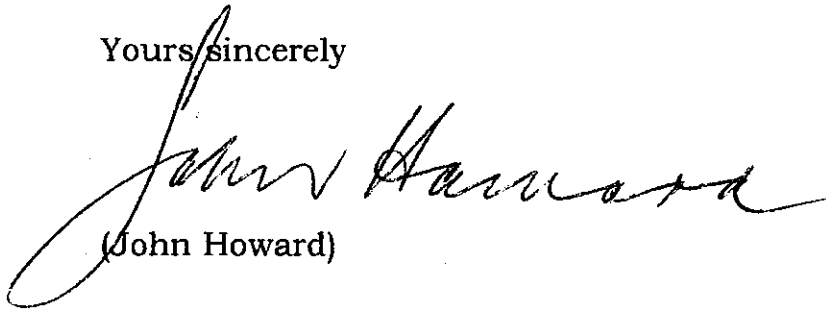
Cardinal Pell is a person of both high intelligence and exemplary character. Strength and sincerity have always been features of his personality. I have always found him to be lacking hypocrisy and cant. In his chosen vocation he has frequently displayed much courage and held to his values and beliefs, irrespective of the prevailing wisdom of the time.

Hon John Howard OM AC

Cardinal Pell is a lively conversationalist who maintains a deep and objective interest in contemporary social and political issues.

It is my view that he has dedicated his life to his nation and his church.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'John Howard', written in dark ink. The signature is fluid and elegant, with a large initial 'J'.

(John Howard)