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To the Honourable Ann Lyons

**Submission to Queensland Sentencing Advisory Council's Review of Sentencing for Sexual Assault and Rape Offences (reference 608591/6)**

Rape and Sexual Assault Research and Advocacy (**RASARA**) thanks you for the invitation to make a submission to the Queensland Sentencing Advisory Council's (**QSAC**) public consultation on sentencing sexual assault and rape.

RASARA is an independent, not-for-profit charitable organisation established to build and hold the evidence base for survivor-centric rape justice reform. We advocate for best practice in legal responses to rape and sexual assault. More information about RASARA is available at: <http://rasara.org>.

Our submission focuses on the relevance and impact of good character evidence when sentencing adults convicted of rape or sexual assault under the *Penalties and Sentences Act 1992* (Qld) (the **PSA**).

Rape and sexual assault offenders hide in plain sight. They are "fathers, co-workers, brothers, lovers, friends".<sup>1</sup> It is uncontroversial that their offending is significantly underreported and inflicts irreparable harm upon individuals, families, communities and society at large. The infrequency with which rape and sexual assault are successfully prosecuted means it is vital that, on the rare occasion when a conviction is secured, courts have the correct tools to impose a sentence which adequately reflects the severity of the offender's conduct, recognises the impact of offending and sends a strong message to the community that sexual violence is not acceptable.

To this end, our submission responds to the following consultation question offered by QSAC.

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<sup>1</sup> Veronique Valliere, *Unmasking the Sexual Offender*, Chapter 3: Myth-Information, Our Misinformed Beliefs About Sexual Offenders, Taylor & Francis Group, 2023, 30.

**Question 6: Should any changes be made to how good character can be considered by courts as this applies to sexual assault and rape?**

“An offender needs to groom the audience as much as he needs to groom the victim ... The offender grooms the audience through his relationships, building currency he can exchange for denial and protection”.<sup>2</sup>

Section 9 of the PSA requires a court to consider the character of an offender being sentenced.<sup>3</sup> Good character may be applied as a mitigating factor to reduce the severity of a sentence.<sup>4</sup> In determining “character”, a court may consider an offender’s previous convictions, history of domestic violence, significant community contributions and any other matters considered relevant,<sup>5</sup> such as their “good work” in visiting the sick or elderly; their “kind nature”, and other “conduct or matters which reveal redeeming features of the offender’s character”.<sup>6</sup>

This provision gives courts wide discretion to consider how an offender’s “inherent moral qualities”<sup>7</sup> should inform their sentencing. Good character evidence is only expressly excluded from application to sentencing decisions where the offender’s good character “assisted [them] in committing the offence” involving a child under the age of 16 years.<sup>8</sup>

For the following three reasons, it is RASARA’s position that good character evidence has no role to play in sentencing rape and sexual assault, whether perpetrated against adults or children under the age of 16.

*Lack of relevance or utility in good character evidence*

In hearing good character evidence, courts are susceptible to be groomed by offenders’ “excellent capacity for presenting themselves in a prosocial way”.<sup>9</sup> That an offender has an excellent employment history, a clean slate of convictions, or family members who vouch for their compassionate nature is totally unrelated to their *demonstrated* capacity and willingness to engage in rape or sexual assault. It is illogical to consider these factors as mitigating the severity of a sentence when these factors did not prevent commission of the offence in the first place.

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<sup>2</sup> Veronique Valliere, *Unmasking the Sexual Offender*, Chapter 4, “I know him – he’s not like that”, the struggle to believe, Taylor & Francis Group, 2023, 45.

<sup>3</sup> PSA ss 9(2)(f), 9(3)(h); 9(6)(h).

<sup>4</sup> *Ryan v The Queen* (2001) 206 CLR 267.

<sup>5</sup> PSA s 11.

<sup>6</sup> *Ryan v The Queen* (2001) 206 CLR 267, [32] (McHugh J); [102] (Kirby J); [142] (Hayne J).

<sup>7</sup> As character evidence was described by the High Court in *Melbourne v The Queen* (1999) 198 CLR 1 [33].

<sup>8</sup> PSA s 9(6A), introduced in 2020 by the [Criminal Code \(Child Sexual Offences Reform\) and Other Legislation Amendment Act 2020 \(Qld\)](#) s 53.

<sup>9</sup> Veronique Valliere, *Unmasking the Sexual Offender*, Chapter 4, “I know him – he’s not like that”, the struggle to believe, Taylor & Francis Group, 2023, 44.

(a) *Paradoxical application*

The purported relevance of good character evidence has two elements which are reflected in rape and sexual assault sentencing decisions of Queensland courts spanning the past ten years.<sup>10</sup> One is the importance of the sentencing principles of rehabilitation, specific deterrence and protection of the community, for which the offender’s character is theoretically relevant by speaking to the likelihood of recidivism.<sup>11</sup> The other is “lapse theory”, the notion that a person of otherwise good character can have a momentary lapse of judgement, when presented with an opportunity, that leads them to commit an offence opportunistically and “out of character”<sup>12</sup>; meaning that they are not likely to do it again.

Both justifications are evident in practice, with the paradoxical effect of offenders both distinguishing and relying on their character to reduce the severity of their sentence. Their offence is described as being “out of character”, “uncharacteristic” or “completely alien”.<sup>13</sup> Yet, the offender attempts to use their character to plead for mitigation, by reference to their lack of previous convictions;<sup>14</sup> lack of offending since commission of the offence being sentenced;<sup>15</sup> committed family relationships (including with parents, long-term partnerships, marriage, and child bearing);<sup>16</sup> maintaining stable friendships;<sup>17</sup> community involvement including through sport, religion or diasporas;<sup>18</sup> demonstrated compassion or “fundamental decency”;<sup>19</sup> positive character references from family members;<sup>20</sup> history of employment;<sup>21</sup> and / or excellent performance at school.<sup>22</sup> Good character may be considered even when it actively facilitated the commission of an offence: such as an Uber driver who assaulted a passenger but who otherwise demonstrated a “good work ethic”.<sup>23</sup>

An absence of previous convictions is a particularly concerning criteria used to assess character. A standing principle of sentencing practice is that an offender can only be punished for the crimes of which they have been convicted. When considering character, having no prior convictions is translated into a presumption that the offender has not committed any other offences at all. This leads to two additional presumptions: that the offender has good character (otherwise) as a fact; and that

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<sup>10</sup> See appendix 1: We have analysed these cases to the extent practically possible within the time we have had available. See also N Stevens and S Wendt, The “good” child sex offender: Constructions of defendants in child sexual abuse sentencing, *Journal of Judicial Administration* Vol 24, No 2, 2014.

<sup>11</sup> See, eg, *R v Downs* [2023] QCA 223 at [32].

<sup>12</sup> *Ryan v The Queen* (2001) 206 CLR 267, [29] (McHugh J); [68] (Kirby J).

<sup>13</sup> *R v Sologinkin* [2020] QCA 271; *R v Rogan* [2021] QCA 269.

<sup>14</sup> *R v Abdullah* [2023] QCA 189; *R v FVN* [2021] QCA 88; *R v McConnell* [2018] QCA 107; *R v Williams; Ex parte Attorney-General (Qld)* [2014] QCA 346.

<sup>15</sup> *R v HCI* [2022] QCA 2; *R v SDF* [2018] QCA 316.

<sup>16</sup> *Sologinkin* [2020] QCA 271; *R v McConnell* [2018] QCA 107; *R v Williams; Ex parte Attorney-General (Qld)* [2014] QCA 346.

<sup>17</sup> *R v Rogan* [2021] QCA 269.

<sup>18</sup> *R v Abdullah* [2023] QCA 189; *R v Rogan* [2021] QCA 269; *R v Williams; Ex parte Attorney-General (Qld)* [2014] QCA 346.

<sup>19</sup> *R v Rogan* [2021] QCA 269.

<sup>20</sup> *R v Downs* [2023] QCA 223.

<sup>21</sup> *R v Fahey* [2021] QCA 232; *R v McConnell* [2018] QCA 107; *R v Williams; Ex parte Attorney-General (Qld)* [2014] QCA 346.

<sup>22</sup> *R v McConnell* [2018] QCA 107.

<sup>23</sup> *R v Singh* [2024] QCA 50.

their lack of previous convictions is because they have committed no other offences. Thus, an absence of proof either way is converted into a positive presumption to the benefit of the offender.

*(b) Impact on sentencing*

Given the instinctive synthesis process of sentencing, the extent to which good character evidence acts as a mitigating factor is not usually clear on the face of a judgment. Its practical effect on sentencing is seemingly to offer leniency to the offender such as by imposing a shorter term of imprisonment; imposing a non-custodial sentence; or suspending a sentence.

One recent example of its application in Queensland is *R v RGB* [2022] QCA 143, where a separated husband was convicted of four counts of attempted rape and indecent assault of his wife and was sentenced to three years suspended after 18 months. The Queensland Court of Appeal found this sentence was manifestly excessive “given the nature of the offending and the mitigating circumstances”, and the sentence was reduced to two years imprisonment suspended after 12 months.<sup>24</sup> Whilst the Court of Appeal found the offending to be “violent and disgusting”, it was considered a mitigating factor that “it gave rise to the applicant’s only convictions”, and was “an aberration by a person who had otherwise established good character over a long period”.<sup>25</sup> It was even posited that the conduct “appears to be an aberration in a specific, stressful context: the breakdown of a marriage; the parties attempting to live separately under one roof, and associated sexual jealousy”.<sup>26</sup>

Given that the offender’s lack of previous convictions did not prevent him from engaging in this “violent and disgusting” offence, it is not clear how his lack of previous convictions served as a mitigating factor for the Court. If the offender was capable of breaking from his otherwise good character on one occasion, it is naïve to assume that he never has done so before, and never will again. All that good character evidence demonstrates is that the offender’s character involves *both* an ability to be perceived as abiding by legal and social norms, *and* simultaneously capable of abhorrent treatment of those he is emotionally intimate with.

*Utility of section 9(6A)*

Section 9(6A) of the PSA, which bars consideration of good character evidence where the offender’s good character “assisted” commission of the offence, offers no utility in remedying the inappropriate use of good character evidence.

We formed this opinion by comparing section 9(6A) with the equivalent section 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW). This comparison was necessitated by the lack of substantive judicial consideration of section 9(6A) to sentencing decisions regarding child sexual abuse (**CSA**) by courts in Queensland (noting our case analysis in Appendix 1 and the relatively

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<sup>24</sup> *R v RGB* [2022] QCA 143 [38] (Davis J).

<sup>25</sup> *R v RGB* [2022] QCA 143 [27] (Davis J).

<sup>26</sup> *R v RGB* [2022] QCA 143 [8] (Dalton JA).

recent introduction of section 9(6A) in 2020).<sup>27</sup> On this basis, considering the application of section 21A(5A) is useful to explore the utility of extending s 9(6A) to all rape and sexual assault offences.

In New South Wales, section 21A(5A) was introduced to the *Crimes (Sentencing Procedure) Act 1999* (NSW) in 2008 after the High Court ruled that it was an error to state that an offender’s “unblemished character and reputation” should not be taken into account as a mitigating factor when sentencing.<sup>28</sup> In an attempt to prevent offenders from using their good character to mitigate the severity of sentencing for CSA, section 21(5A) provides:

“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”.<sup>29</sup>

Analysis of decisions applying section 21A(5A) demonstrates neither consistency nor coherence in how New South Wales courts have dealt with good character evidence since enactment of the provision. Specifically, courts have demonstrated confusion as to whether the provision requires an offender’s “active” use of good character to commit the offence. In *Bhatia v The King*,<sup>30</sup> the scope of s 21A(5A) was described as follows:

“The language of the section is quite broad and is apt to catch a wider range of offenders than those who trade on their trusted position and good reputation to gain access to unsuspecting children because the child or parent is misled into believing the perpetrator is a person of good character. Some obvious examples would include priests and other members of the clergy, politicians, teachers and community leaders. The section would also apply to offenders, with no other connection to the family, who act as babysitters or carers by providing references attesting to their good character and reputation. It may also apply, in some instances, to family friends and relatives, **but only where there is evidence going beyond the fact of the relationship and which suggests that the offender's good character or reputation played a role in assisting them to gain access to the child or to commit the offence.** As I said at the outset, it would be wrong to be prescriptive and the application of the section turns on the facts of the individual case.”

Divergent applications of whether good character “assisted” an offender include one decision where s 21A(5A) was held not to apply to an offender who assaulted his nephew, because “[the child] had

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<sup>27</sup> Noting very limited sentencing remarks applying s 9(6A) in [R v GWS \[2023\] QDC 475](#): “your good character as a trusted family member did assist you in committing these offences because it facilitated access to the children at your home and in your car and permitted you to be alone with them without arousing suspicion. To that extent your good character is not a matter I have regard to in mitigation”.

<sup>28</sup> *Ryan v The Queen* [2001] HCA 21.

<sup>29</sup> Notably, the NSW Sentencing Council’s recommendation was that the amendment that became s 21A(5A) should provide for exclusion of good character or lack of prior convictions from mitigatory consideration where the offender “used these factors to commit the offence”. Cf the United Kingdom, where sentencing practice is governed by guidelines rather than legislation. Good character is available as a mitigating factor, but may be treated as an aggravating factor instead “where an offender has used their good character or status to facilitate or conceal the offending”: [Abuse of position of trust: sexual activity with a child/ Abuse of position of trust: causing or inciting a child to engage in sexual activity – Sentencing \(sentencingcouncil.org.uk\)](#).

<sup>30</sup> [2023] NSWCCA 12, [144] (emphasis added).

access to his uncle because he was a relative, not because he was a person of good character.”<sup>31</sup> By contrast, s 21A(5A) has been applied to an offender who assaulted a friend’s child, because their good character and lack of previous convictions at the time of the commission of the offending conduct was of assistance in the commission of the offence by reason of the circumstance that had he lacked such good character or if he held previous convictions, such circumstance would likely have been known in the country town in which he resided and he likely would not have been placed in a repeated position of trust in the care of a child.<sup>32</sup> Equally confusing are various decisions where section 21A(5A) was not raised, in circumstances where it otherwise would seem to apply.<sup>33</sup>

Regardless of how this distinction is treated by courts, section 9(6A) offers even less utility when sentencing adult rape and sexual assault offences. Limitations on good character evidence where that good character “assisted” the offender are more easily applied within the context of institutional abuse, or assaults occurring in an environment where there is evidence demonstrating that the offender’s abuse occurred as a result of their good character. The most common offender for a female survivor of sexual violence is their intimate partner.<sup>34</sup> Even if s 9(6A) could be utilised to prevent good character evidence from being tendered in convictions of institutional CSA, it is difficult to see any practical application in an adult context.

As such, our analysis identifies the failure of this provision to appropriately limit the use of good character evidence, even in its current limited scope. Simply expanding the provision to apply where offenders ‘use’ their good character to assist in offending of adult victim-survivors will thus be fruitless, in addition to failing to recognise that in all cases of rape and sexual assault the offender’s ‘good’ character is weaponised.

*Lack of clarity in decision-making from lack of relevance to sentencing purposes and arbitrary nature*

With no basis in furthering any of the sentencing purposes articulated by section 9(1) of the PSA,<sup>35</sup> the amorphous nature of “good character” evidence tends to cloud, rather than clarify, sentencing decisions. Restricting the use of good character evidence would help courts to decide sentences which adequately reflect the nature of an offence without considering information which tends to offer offenders undeserved leniency.

*(a) Lack of relevance to sentencing guidelines*

The justification of good character evidence as being relevant to an offender’s prospects of rehabilitation fails to acknowledge sexual offenders’ demonstrated ability to maintain a positive public

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<sup>31</sup> *R v Farrell* [2022] NSWDC 695. This was a disturbing reversal of the statutory test, suggesting that it was not the offender’s acts but those of the victim that matter for the purposes of s 21A(5A).

<sup>32</sup> *R v Rose* [2022] NSWDC 705.

<sup>33</sup> *Cheung v The Queen* [2022] NSWCCA 168; *BR v The Queen* [2021] NSWCCA 279; *R v A* [2021] NSWDC 232; *R v H* [2021] NSWDC 107; *R v Hamilton* [2019] NSWDC 382; *R v Mollel* [2017] NSWDC 36; *R v ND* [2016] NSWCCA 103; *R v van Ryn* [2016] NSWCCA 1.

<sup>34</sup> Australian Bureau of Statistics, Statistics about sexual assault and childhood sexual abuse, including characteristics of victim-survivors, victimisation rates, and police reporting, 24 August 2021, at [Sexual Violence - Victimisation | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au).

<sup>35</sup> Punishment and rehabilitation of the offender, deterrence to the offender and other persons, community denunciation of the offender’s conduct and protection of the Queensland community from the offender.

façade: offenders “tell us what we want to hear” and “act in compliant ways” under observation.<sup>36</sup> Pleading that an offence was a moment of weakness or a lapse of judgement should speak to a lack of accountability for their actions and a terrifying lack of insight into why an offender broke from their “otherwise good character” to perpetrate an offence.

Rape or sexual assault is never acceptable. Good character evidence suggests that committing these offences is more acceptable where an offender can establish certain redeeming qualities, therefore failing to deter either the offender or other persons from similar conduct. As part of the New South Wales Sentencing Council’s review of CSA sentencing practices in 2008, it noted an important and overlooked statement from the common law:

“To give an applicant’s ‘previous good character’ much weight in such circumstances is to give an appearance that the court is conceding to a parent or a person in loco parentis or within the family unit some right to use a child for sexual pleasure at will.”<sup>37</sup>

Good character evidence waters down any message of denunciation otherwise delivered through a strong and cohesive approach to sentencing. The Queensland community can hardly be said to denounce rape and sexual assault if their support is tendered as evidence to justify the application of a more lenient sentence. Where an offender is a person of good community standing and reputation, good character evidence may even deter survivors from reporting claims for fear of entering what appears to be a personality contest.

The only punitive purpose achieved by good character evidence is punishment of the survivor. After having their credibility attacked during cross-examination during the offender’s trial, good character evidence risks further traumatising the survivor by requiring that they hear evidence of the good person they have accused.<sup>38</sup>

*(b) Obscuring nature*

The utility of judicial discretion in applying less weight to good character evidence is limited by the subjective nature of “character”. Providing courts with “lots of information about the person being sentenced” can be blinding, rather than clarifying, where the relevance and weight of that information is a subjective query influenced by individual perspective. Judges bring to their role unique beliefs and assumptions – legal knowledge and social prejudices alike, as moulded by their class, sex, gender, age, ethnicity, and religion.<sup>39</sup> This has enormous implications for generalisations made by judges

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<sup>36</sup> Veronique Valliere, *Unmasking the Sexual Offender*, Chapter 3: Myth-Information, Our Misinformed Beliefs About Sexual Offenders, Taylor & Francis Group, 2023.

<sup>37</sup> *Hermann v The Queen* (1988) 37 A Crim R 440, 448 per Lee J.

<sup>38</sup> Prosecutors are required by the Queensland *Director of Public Prosecution’s Guidelines* to ask survivors to be present during sentencing and to immediately inform the prosecutor of any incorrect assertions regarding the offender’s character, such that they can be challenged.

<sup>39</sup> Elisabeth McDonald, From “Real Rape” to Real Justice? Reflections on the efficacy of more than 35 years of feminism, activism and law reform (2014) 45 VUWLR 487, 498.

about good character evidence in the context of sexual offending, particularly given that “[v]ery few of us understand deviance or understand what motivates someone to commit a sexual assault”.<sup>40</sup>

Courts are presently tasked with synthesising the legislated requirement to consider character, the absence of clear precedent demonstrating exactly how good character should be applied, the ambiguity of section 9(6A), and pervasive misunderstandings of the nature of rape and sexual assault offenders. The task of sentencing sexual offences would be clearer by barring good character evidence from being considered at all.

### Conclusion and recommendations

Rather than providing clarity to sentencing, good character evidence serves offenders by obscuring their accountability. RASARA submits that section 11(1) of the PSA should be amended such that when sentencing an offender, a court may have regard to:

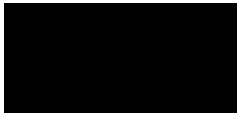
“(a) the number, seriousness, date, relevance and nature of any previous convictions of the offender, without considering evidence of the offender’s lack of previous convictions; and ...

(c) ~~any significant contributions made to the community by the offender; and~~

(d) such other matters as the court considers are relevant, without considering evidence of the offender’s good character.”

Thank you for the opportunity to provide this response. We welcome the opportunity to discuss our recommendations further.

Regards,



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*On behalf of the Board of RASARA*

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<sup>40</sup> Veronique Valliere, *Unmasking the Sexual Offender*, Chapter 3: Myth-Information, Our Misinformed Beliefs About Sexual Offenders, Taylor & Francis Group, 2023, 40.



## Appendix 1: Decisions of Queensland courts

We reviewed the following 12 decisions of the Court of Appeal of the Supreme Court of Queensland from 2014 to 2024<sup>41</sup> which referred to good character evidence when sentencing rape and sexual assault offences (sections 349 and 352 of the *Criminal Code 1899* (Qld)) under the *PSA*.

Our review demonstrates that good character evidence is applied by sentencing judges and appeal courts to reduce the severity of a sentence for rape or sexual assault; that consideration of that good character evidence is seemingly untested and accepted without examination by the sentencing judge or appeal court; and that the extent to which that good character evidence does impact a court's decision is not expressly stated in their reasons (making it difficult to ascertain the exact impact of that evidence).

Decision	Findings re character evidence?	Relevant extracts
<p>1. <a href="#">R v Singh [2024] QCA 50</a></p> <p>Uber driver / passenger</p>	<p>Appeal of sentencing decision for being manifestly excessive.</p> <p>Sentencing judge "considered" lack of criminal history and good character references as "mitigating factors" (extent of mitigation not stated).</p> <p>Appeal court found the sentence of 15 months imprisonment for 3 counts of sexual assault was not manifestly excessive.</p>	<p>[18] In addition to the circumstances of the offending, the sentencing Judge considered the applicant's antecedents and a number of mitigating factors relevant to the sentence, which included that ... (b) the applicant had no criminal history ... (f) references were provided as to the applicant's character, showing that he is a devoted husband and father, with a good work ethic, familial support and that he has previously undertaken charity work...</p> <p>[39] In the circumstances of this case, and having regard to the authorities, a sentence involving actual custody was open, notwithstanding the mitigating circumstances in his favour which suggested he was otherwise of good character, remorseful and lacking a prior criminal history. While the authorities relied upon by the applicant's counsel suggest the period of actual custody could have been for a lesser period, the period of four months was not outside the proper exercise of a discretion.</p>
<p>2. <a href="#">R v Downs [2023] QCA 223</a></p> <p>Manager of pizza store / eight employees</p>	<p>Appeal of sentencing decision for being manifestly excessive.</p> <p>Positive character references and lack of further offences were at least considered as mitigating factors by sentencing judge, though treatment is unclear.</p> <p>Appeal court found the sentence of 30 months</p>	<p>[32] The learned sentencing judge set out ... (d) the applicant's age and lack of any criminal history; ... (f) the applicant was the adult in the workplace and that meant he should have been the protector of the complainants; ... (k) the references and letter tendered in his support; and (l) the fact that he had not offended in the period since 2019, noting that "does speak positively as to your prospects of rehabilitation".</p> <p>[45] It was common ground at the sentencing hearing that s 9(6) of the <i>Penalties and Sentences Act 1992</i> (Qld) did not apply, because the exact ages of some of the complainants was unknown ...</p> <p>[54] Conceding that 18 months and 12 months are within the appropriate exercise of sentencing discretion, the applicant submits that "when account is properly taken of the matters in mitigation",</p>

<sup>41</sup> Noting the introduction of section 9(6A) in 2020, only cases from that time onwards were considered where the survivor was under the age of 16 years.

		<p>imprisonment for 10 counts of sexual assault (suspended for 2 years) was not manifestly excessive.</p>	<p>there was no principled basis for imposing actual imprisonment. The matters of mitigation referred to are: ... (b) positive character references ... (e) no offending in the period since 2019 ...</p> <p>[53] All of those matters were weighed by the learned sentencing judge. Her Honour accepted many of them. However, some were discounted to one degree or another. Specifically, the explanation or context (the fun workplace) was rejected. Her Honour found that the applicant "understood the nature of [his] actions in sexually assaulting these various complainants, that [he] were able to control [his] actions, but ... chose not to, and that ... knew that [he] should not have been engaging in this kind of offending".</p>
3.	<p><a href="#">R v Abdullah [2023] QCA 189</a></p> <p>Two assaults during prospective sale of second-hand cars at sellers' homes</p>	<p>Application for leave to appeal sentence (20 months imprisonment for two counts of sexual assault) for error of fact and manifest excess.</p> <p>Good character evidence noted by court. Further offending whilst on bail considered as one factor justifying sentence.</p> <p>Application dismissed.</p>	<p>[12] Counsel for the applicant below pressed for a sentence that did not involve any actual time in custody and submitted that a 12 month probation order with no conviction recorded would be appropriate; or else a 12 month sentence of imprisonment, wholly suspended, for what was described as "relatively low-level offending". For the applicant, it was emphasised that he is a mature man, with no previous convictions, that he has been married for 22 years and has six children, does not drink alcohol or use drugs, has no mental health problems and is an "outstanding member of the Afghan community". He was not working at the time of the sentence, and was said to be "hoping to go on a pilgrimage in the near future", but had put that on hold pending the outcome of the criminal proceedings.</p> <p>[47] The circumstances of the offending and this offender – notably, the further offending whilst on bail, his minimisation evident from the psychologist's report and the failure yet to have taken any therapeutic steps to address the offending – are such that appropriate punishment, deterrence, strong denunciation of the conduct and community protection all justified an order that he serve part of the sentence in actual custody.</p>
4.	<p><a href="#">R v RGB [2022] QCA 143</a></p> <p>Separated husband / wife</p>	<p>Application for leave to appeal sentence (three years for one count of attempted rape, suspended after 18 months) for manifest excess and impermissibly taking into account complainant's distress when giving evidence.</p> <p>Good character applied to reduce sentence on appeal.</p> <p>Application granted, appeal allowed, sentence varied to two years imprisonment suspended after 12 months.</p>	<p>[8] ... having regard to the applicant's age, lack of criminal record, and the fact that he has not committed any offences since the offending with which this Court is dealing, it seems to me that the sentence imposed by the learned primary judge was manifestly excessive. The conduct here appears to be an aberration in a specific, stressful context: the breakdown of a marriage; the parties attempting to live separately under one roof, and associated sexual jealousy.</p> <p>[27] The offending was violent and disgusting. However, it gave rise to the applicant's only convictions. The offending occurred against the context of a marital break-up and the heightened emotions which that brings. While that is by no means any excuse for the offending, it gives force to the applicant's submission that this offending was an aberration by a person who had otherwise established good character over a long period.</p>

<p>5.</p>	<p><u><i>R v Fahey</i> [2021] QCA 232</u></p> <p>Family friend grooming a 16 year old child</p>	<p>Application for leave to appeal sentence (22 months imprisonment for 1 count of sexual assault and 1 count of grooming a child, suspended after three months) for manifest excess and for failure to consider rehabilitation and low risk of reoffending.</p> <p>Considered in context of likelihood of reoffending. No specific findings made.</p> <p>Appeal allowed and sentence varied to 12 months imprisonment, suspended after three months.</p>	<p>[13] The applicant was 56 when sentenced. He had no prior convictions. He had been gainfully employed whilst an adult and contributed to society. Family members and a close friend of the applicant provided references in April 2021 after the applicant had pleaded guilty. Each of them conveyed that the applicant had disclosed the charges against him and his guilt, spoke highly of the applicant, and expressed opinions to the effect that the applicant was suffering stress, anxiety, or mental health problems when he committed the offences, he was very remorseful and regretful, and he would not re-offend.</p> <p>[36] Each of the circumstances that the applicant was otherwise of good character, had made contributions to the community, and had a good history of working, is also not unusual in a case of this kind ...</p>
<p>6.</p>	<p><u><i>R v FVN</i> [2021] QCA 88</u></p> <p>Parent / child and stepchildren under the age of 16</p>	<p>Application for leave to appeal sentence (13 years imprisonment for three rapes) for denial of procedural fairness and manifest excess.</p> <p>Good character and breach of a position of trust were considered by the primary judge and restated by appeal court. Section 9(6A) was not applied.</p> <p>Application for leave refused.</p>	<p>[42] Each of the four complainants was a child under the applicant's care. He "grossly breached that trust and [his] proper role as a father." The applicant "used that position, in many cases under the guise of purportedly educating [his] daughters to subject them to vile sexual acts for [his] own sexual gratification." The offences were "at the zenith of violation of trust and abuse of power."</p> <p>[44] The applicant had no prior criminal convictions. Between 8 and 11 years of age, the applicant had endured serious sexual assaults. He left school at year 10 and worked as a jackaroo. He enlisted in the defence forces and served two years in Papua New Guinea, reaching the rank of sergeant. At age 21 he served abroad for 367 days in the Vietnam War. He then spent some time in a variety of civilian occupations until he obtained a disability pension...</p> <p>[46] In references, his three sisters and a brother-in-law disavowed witnessing any conduct in the nature of the offences. Two sisters described it as completely alien or out of character. However, his Honour found: "Your treatment of those [complainant] children, to my mind, demonstrates your true character, which you have hidden from other members of your family over many years. Your predatory conduct towards those four young girls over some 22 years for your own sexual gratification suggests that you have a serious sexual deviancy."</p>
<p>7.</p>	<p><u><i>R v Sologin</i> [2020] QCA 271</u></p> <p>Casino patron / employee</p>	<p>Application for leave to appeal sentence (four months imprisonment wholly suspended for one count of unlawful and indecent assault)</p> <p>Evidence of good character tendered and accepted but not applied</p>	<p>[24] The appellant's substantial submission was that, although serious, this offence should have been regarded as the uncharacteristic act of a man who was otherwise of unblemished character. He was described as a committed father of three boys. He did not reoffend after committing this offence. Two character witnesses gave evidence of the appellant's previous good character and said that the offending behaviour was out of character. It was submitted that there was no likelihood of reoffending. He has what his counsel described as an impressive and extensive involvement in the community through his work with junior rugby league,</p>

		<p>to mitigate sentence, seemingly only due to lack of remorse.</p> <p>Application dismissed.</p>	<p>something that would be jeopardised by a conviction. The appellant's blue card was revoked but then reinstated after a review process pending the outcome of this appeal. There is no evidence that a conviction would preclude his obtaining a blue card to continue his role in coaching junior rugby league.</p> <p>[26] This was a crude and opportunistic sexual offence by a man of mature years against a vulnerable woman in her workplace ...</p> <p>[27] The appellant was entitled to put the Crown to proof of its allegation and must not be punished for exercising his right to a trial. But, having been found guilty by a jury of twelve upon overwhelming evidence, including a video recording of the actual commission of the offence, the appellant was still unwilling or unable to express the slightest regret or contrition for his criminal act. <b>The appellant's past good character may be accepted as a fact, but what was conspicuously and seriously lacking was any insight that should have evoked from him, ultimately, an acknowledgment of his wrongdoing after his guilt had been established beyond any reasonable doubt. Her Honour rightly took this into account as a factor.</b></p>
8.	<p><u><i>R v Rogan [2021] QCA 269</i></u></p> <p>Friends</p>	<p>Application for leave to appeal and appeal against sentence for manifest excess (12 months imprisonment suspended after two months for one count of indecent assault).</p> <p>Evidence of good character applied with remorse and timely guilty plea to impose non-custodial sentence.</p> <p>Appeal allowed and sentence varied to be wholly suspended.</p>	<p>[6] ... Two of [the offender's] friends furnished references in which they each describe the applicant as a decent person who has, by his actions in the past, exhibited compassion for others. The applicant's current partner and mother have both expressed their belief in his fundamental decency...</p> <p>[7] The applicant has no criminal history. He has an excellent employment history. Before he committed this offence he was in a stable relationship and, since this charge was brought, he has established another stable, seemingly long-term, relationship with a woman who supports him in the face of this criminal proceeding and who has, as I have said, tendered a character reference.</p> <p>[13] The evidence established that the applicant's criminal acts were wholly uncharacteristic for him. The unchallenged evidence was that, apart from this offence which he committed when he was 36 years old, the applicant has been a man of good character, with a work history as a useful and productive member of our community, who is capable of forming and maintaining stable relationships, both of an intimate kind and of a social kind and is capable of gaining the justifiable trust of those in his circle.</p> <p>[15] His remorse, his past good character and his present and future prospects as described by his psychologist, lead to the conclusion that he is not likely to reoffend.</p> <p>[18] In my respectful opinion, previous cases such as <i>R v Owen</i> and <i>R v Demmery</i> show that a sentence that includes an actual period of imprisonment is not always required in cases like the present, in which an offender's criminal acts are out of character, in which there is real remorse, and in which there has been a timely plea of guilty...</p>
9.	<p><u><i>R v Ruiz [2020] QCA 72</i></u></p>	<p>Application to appeal sentence (48 months imprisonment for 1 count of rape and 2 counts of</p>	<p>[5] The respondent did not use violence or threats to compel the child to participate. He has no previous criminal history. The Crown conceded at the sentence hearing that the offending was opportunistic, by which I understand is meant that the offending was</p>

	<p>Family friend / 8 year old child</p>	<p>indecent treatment of a child) for manifest inadequacy.</p> <p>Good character found to mitigate severity of sentence because of low risk of recidivism.</p> <p>Application dismissed.</p>	<p>not premeditated. He did not commit any further such offences or any offences between the date of these particular offences and his arrest 18 months later. He was 32 years old when he committed the offences. He is married with three young children, and, until he committed these offences, he had been an active and highly respected member of his church and community. His wife continues to support her husband.</p> <p>[20]...These were loathsome offences, but until he committed them, the respondent had led a stable and normal family life with his wife and children. He had been a respected member of his community. He possessed skills that made him eminently employable. He had committed no previous offences and had committed no offences from the time he committed these offences until his arrest. These offences were, as the Crown acknowledged, not planned.</p>
10.	<p><a href="#">R v McConnell [2018] QCA 107</a></p> <p>Rape in student share house</p>	<p>Appeal for against sentence of five years imprisonment for manifest excess.</p> <p>Absence of prior convictions stated to be a "weighty mitigating factor", whilst work history and family relationships referred to without making findings.</p> <p>Application to appeal dismissed.</p>	<p>[10] ... The sentencing judge remarked that he received an excellent education. It is apparent that he did well at school. After he moved into the share house, his university marks began to deteriorate because, as the sentencing judge observed, he preferred to stay at home and did not want to leave others around the complainant. Ultimately he failed all of his subjects and left the university at the end of the month in which he committed the offences. Prior to sentence, he was working in a restaurant and living with his mother. He intended to return to university. A psychologist noted that the applicant had good relationships with his family members, except his father (who had reportedly abused and later separated from the applicant's mother when the applicant was very young), he had many male peer relationships through school and university and engaged in team sports regularly, he did not report significant history of substance abuse, he had many interests and engaged in activities on a regular basis, he did not meet any of the criteria for a personality disorder, and he had respect for the justice system and wanted help for his problems. The psychologist referred to the applicant having suffered extremely severe depression and moderate stress from which he had recovered within about six months.</p> <p>[22]... The applicant's plea of guilty and remorse, and especially his youthfulness and absence of previous convictions, are weighty mitigating factors.</p>
11.	<p><a href="#">R v Utley [2017] QCA 94</a></p> <p>Rape during home invasion</p>	<p>Application for leave to appeal sentence of 10 years for one count of rape, one count of burglary, three counts of assault, for manifest excess.</p> <p>Reference to conduct being "out of character" part of offender's argument for sentence being manifestly excessive by not considering his remorse.</p>	<p>[16] The applicant submits the pleas of guilty were significant for two reasons ... the pleas of guilty demonstrated remorse for his actions, which were completely out of character for the applicant. The sentencing judge made no reference to the beneficial effect of the pleas or to the remorse shown by those pleas. Had those matters been considered, the pleas of guilty would have been properly recognised by warranting a less severe sentence for the offence of rape.</p> <p>[24] There was also no obligation on the sentencing judge to expressly refer to remorse. Whilst the applicant had no prior convictions and the conduct was out of character, the pleas of guilty had been entered late in the context of an overwhelming Crown case. It was open to the sentencing judge to therefore no place particular reliance upon the element of remorse.</p>

		Application dismissed.	
12.	<p><a href="#">R v Williams; Ex parte Attorney-General (Qld) [2014] QCA 346</a></p> <p>Rape in public place</p>	<p>Application for leave to appeal sentence of 8 years imprisonment with parole after 3 years for manifest inadequacy.</p> <p>Good character evidence considered by trial and appeal judges as demonstrating capacity for rehabilitation.</p> <p>Appeal granted and sentence varied to eight years imprisonment.</p>	<p>[42] The references tendered were from the respondent's sister, wife, priest, friend and employer. They attest to the respondent's good character, his loving relationships with family members, good work ethic and sincere remorse. His wife wrote of the impact on their young family.</p> <p>[43] The matters that were expressly referred to by the learned sentencing judge were ... (e) there were no prior convictions for any relevant offence; (f) in the four years since the rape there had been no convictions for any offence; ... (h) the respondent appeared to be a 'suitable candidate for rehabilitation' given: (iv) his forming the relationship with his wife; (v) his going back to religion; (vi) his good behaviour in prison on remand over some seven months; and (vii) his then present intentions of resuming his relationship with his wife and son and re-establishing his career upon his release."</p> <p>[106] As to the personal features — the respondent's criminal history was very limited and without convictions for violence; he had a good work record. For the reasons the sentencing judge mentioned and that I have summarised above [at [43]] the respondent is a suitable candidate for rehabilitation ...</p>