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8 April 2026

The Hon Robert Borsak MLC  
Chair  
Portfolio Committee No. 5 – Justice and Communities  
NSW Legislative Council

By email: [portfoliocommittee5@parliament.nsw.gov.au](mailto:portfoliocommittee5@parliament.nsw.gov.au)

Dear Mr Borsak,

### **INQUIRY INTO THE CRIMES (SENTENCING PROCEDURE) AMENDMENT (GOOD CHARACTER AT SENTENCING) BILL 2026 – SUPPLEMENTARY QUESTIONS**

The Law Society thanks the Legislative Council Portfolio Committee No. 5 - Justice and Communities (**Committee**) for the opportunity to give evidence at the hearing for the inquiry into the Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing Bill) 2026 (NSW) on Tuesday 31 March 2026. We set out our response to the Committee's supplementary questions below.

**Your submission also argued against extending the special rule to cover all child sex offences, that is to those where the use of good character was not “of assistance to the offender in the commission of the offence”, such as voyeurism offences. It also supported extending the special rule to other groups of vulnerable victims such as persons with a cognitive impairment or young persons under special care. Is that still your position in regard to the Bill? Do you have proposed drafting for the extension of the special rule to other vulnerable groups?**

We do not recommend extending section 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to all sentence proceedings for child sexual offending. Our members report that currently, particularly with the benefit of common law such as *Ryan v The Queen* (2000) 118 A Crim 438, evidence of good character is given little to no weight on sentencing for child sexual offences.

We note, and support, the view put forward by Legal Aid NSW in its preliminary submission to the NSW Sentencing Council, “despite the limited impact of good character evidence on sentencing in these matters, we do not consider that it should be altogether removed as a mitigating factor. In our view, it is important to preserve judicial discretion in sentencing for child sexual offending, where the spectrum of offending is broad, in terms of the seriousness of the conduct involved and the circumstances particular to the offender.”<sup>1</sup>

In our view, judicial discretion in sentencing is a particularly important tool and safeguard to ensure that all material can be considered in view of the particular facts and circumstances of each case. This includes consideration of good character evidence, which can assist judicial officers to make informed assessments in

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<sup>1</sup>Legal Aid NSW, Preliminary submission to the NSW Sentencing Council ‘Review of good character in sentencing’, 8 July 2024, online: <https://sentencingcouncil.nsw.gov.au/documents/our-work/good-character/PGC68.pdf>

respect of other factors relevant to sentence, including prospects of rehabilitation and risk of reoffending, to properly achieve purposes including protecting the community.

The Law Society would not oppose consideration of extending the special rule, in the terms currently legislated under section 21A(5A), to sexual offences where the victim-survivor is a vulnerable person. We recognise that other vulnerable groups may also be disproportionately subject to the specific power dynamics and vulnerability contemplated by the Royal Commission into Institutional Responses to Child Sexual Abuse, where an offender's 'good character and reputation facilitated the offending' and in some cases, may enable them to continue to offend.<sup>2</sup> Examples could include a young person under special care or a person with cognitive impairment in an institutional environment.

We note that in other areas of criminal law and procedure, such as Part 6 and section 306M of the *Criminal Procedure Act 1986* (NSW), it is recognised that children and cognitively impaired persons have a level of similar or equivalent vulnerability. Such provisions could be reviewed and used as a basis to inform the identification of vulnerable groups that may be captured by the provision.

Thank you for the opportunity to respond to the Committee's further questions. Inquiries at first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or [Jade.Fodera@lawsociety.com.au](mailto:Jade.Fodera@lawsociety.com.au).

Yours sincerely,



**Ronan MacSweeney**  
President

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<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report VIII, p 299.