JUSTICE, INTEGRITY AND COMMUNITY SAFETY COMMITTEE

Members present:
Mr MA Hunt MP—Chair
Mr MC Berkman MP
Mr RD Field MP
Ms ND Marr MP (via videoconference)
Mrs MF McMahon MP
Mr PS Russo MP

Staff present:
Ms F Denny—Committee Secretary
Ms K Longworth—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE PENALTIES AND SENTENCES (SEXUAL OFFENCES) AND OTHER LEGISLATION AMENDMENT BILL 2025

TRANSCRIPT OF PROCEEDINGS

Wednesday, 18 June 2025

Brisbane

WEDNESDAY, 18 JUNE 2025

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The committee met at 11.45 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025. My name is Marty Hunt, member for Nicklin and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today.

With me here today are: Peter Russo MP, member for Toohey and deputy chair; Russell Field MP, member for Capalaba; Melissa McMahon MP, member for Macalister; and Michael Berkman MP, member for Maiwar. Joining us via videoconference is Natalie Marr MP, member for Thuringowa.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded. A transcript will be published in due course. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Please remember to press your microphones on before you start speaking and off when you are finished, and please turn your mobiles phones off or to silent mode.

HUGHES, Ms Jo, Director, Strategic Policy and Legislation, Department of Justice

McCONE, Ms Sally, Acting Director, Strategic Policy and Legislation, Department of Justice

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legislation, Department of Justice

STRUBER, Ms Trudy, Principal Legal Officer, Strategic Policy and Legislation, Department of Justice

CHAIR: I now welcome representatives from the Department of Justice. Good morning. Would you like to make an opening statement before we proceed to questions?

Mrs Robertson: Thank you, Chair. In opening, I would also like to acknowledge the traditional owners and custodians of the land on which we are meeting this morning and to pay my respects to elders past and present. Again, thank you for the opportunity to brief the committee today about the Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025. I am going to use this opening statement to briefly outline the reforms in the bill and to address some of the key issues raised in written submissions and also during the public briefing this morning. I note in that regard that the department has provided a detailed written briefing to the committee and further information in the response to submissions that have been received by the committee.

The bill contains reforms to improve sentencing practices, particularly in relation to sexual offences. The bill also introduces a new offence in relation to false representations and makes minor or clarifying amendments to the crimes at sea and blue card legislation. Turning firstly to sentencing reforms, the bill amends the Penalties and Sentences Act to implement four recommendations from the Queensland Sentencing Advisory Council—I will use QSAC, if that is okay with the committee—in their report *Sentencing of sexual assault and rape: the ripple effect*.

As the Attorney-General indicated in the explanatory speech for the bill, and the department similarly noted in its response to submissions, the recommendations from the QSAC report are being assessed in a staged manner. The response in relation to other recommendations not contained in the bill and the timing of any subsequent reforms are a matter for government and will not be addressed today.

The bill implements the intent of recommendation 1 of the QSAC report by introducing a new statutory aggravating factor. The amendments provide that, in determining the sentence for an offender convicted of rape or sexual assault against a child aged 16 or 17 years, the court must treat the age of the victim as an aggravating factor unless the court considers it not reasonable due to exceptional circumstances. The department understands that most stakeholders who made written submissions to the committee were supportive of the new statutory aggravating factor.

The bill also implements recommendation 2 of QSAC's report by extending the current sentencing purposes to include recognising the harm done by the offender to a victim of the offence as a purpose of sentencing. Most stakeholders who made written submissions to the committee appear to be generally supportive of expanding the sentencing purposes to include recognition of harm to victims. However, the department acknowledges that some stakeholders considered that the amendment was unnecessary or raised concerns about the amendment in relation to the absence of definitions of the term 'victim' and the term 'harm'. In accordance with the usual rules for statutory interpretation, in the absence of a statutory definition, these terms will have their plain and ordinary meaning. The department is not aware of any issues with the interpretation of the terms in sentencing proceedings themselves.

The bill also gives effect to recommendation 5 of QSAC's report to qualify the court's treatment of certain types of good character evidence when sentencing offenders for sexual offences. Divergent views were expressed to QSAC regarding the use of good character evidence. Some stakeholders advocated for retaining the current unrestricted use of good character evidence, while others advocated for a complete prohibition on its use.

Balancing a range of factors, including the divergent stakeholder views, QSAC concluded there is a problem with three types of good character evidence—that is, character references, the offender's standing in the community, and the offender's contributions to the community—and the use of these types of evidence should not remain unrestricted. However, QSAC expressly did not recommend a blanket prohibition on the use of these types of evidence, as it considered it impossible to disentangle the problematic parts of the good character evidence from other parts that may serve a legitimate and important purpose in sentencing.

As such, in accordance with QSAC's recommendation, the bill qualifies the treatment of this evidence, providing the court may treat an offender's good character, to the extent it is established by these forms of evidence, as a mitigating factor but only if it is relevant to their prospects of rehabilitation or risk of reoffending. QSAC considered that this approach would prevent the problematic evidence being used in a general sense by directing legal practitioners and judicial officers to link the use of these three types of good character evidence to the offender's prospects of rehabilitation or risk of reoffending.

It is acknowledged that stakeholders who made written submissions to the committee had divergent views about the amendments to good character evidence proposed in the bill. Some stakeholders again supported the amendments, while others advocated for greater restrictions on the use of good character evidence. A large number of submissions advocated for a complete prohibition on the sentencing court considering good character evidence or good character references specifically in relation to these particular types of offences. The department acknowledges that a number of these submissions were made by victims of crime and recognises that victims can find the use of good character evidence distressing.

As the bill seeks to implement QSAC's recommendation, broader reforms to the use of good character evidence than those recommended are outside the scope of the bill and are ultimately a policy matter for government. However, the department does note QSAC's observation at page 627 of the report that the circumstances of each offender, each victim and each offence are infinitely varied and that sentencing approaches promoting individualised justice within a framework of judicial discretion are generally more likely to support positive outcomes than a one-size-fits-all or a one-size-fits-most approach.

Offending behaviour and opposing appropriate sentences for offending behaviour is complex, and the complete removal of judicial discretion to consider good character evidence has the potential for unintended consequences. A blanket prohibition for a particular category of offences would prevent the court from considering evidence of a person's good character for any purpose for every offence in that category.

Categories of offences such as child sex offences capture a wide range of offending behaviour. A child sex offence may involve extreme predatory and exploitative behaviour, but a child sex offence is also a 16-year-old girl having sex with her 15-year-old boyfriend or an 18-year-old showing their 14-year-old football teammate pornography. A complete prohibition would apply to every person who commits any child sex offence.

A complete prohibition on the consideration of good character evidence for all offences may also have unintended consequences for some victims. The Women's Safety and Justice Taskforce found that the majority of women offenders hold a dual status of victim and offender and that their victimisation experiences are often overshadowed by their offending. A complete prohibition on the consideration of good character evidence may perpetrate this. For example, if a victim of domestic and family violence committed an offence in the context of or to escape that violence, a blanket prohibition would prevent the sentencing court from considering her previous good character and the fact that the offending was atypical and out of character.

The bill also implements recommendation 23 of the QSAC report. The bill amends section 179K of the Penalties and Sentences Act to clarify that the court cannot draw any inference that an offence caused little or no harm from the fact that a victim impact statement was not provided to the court. Again, the department's understanding is that most stakeholders who made written submissions to the committee were generally supportive of this amendment.

Turning now to amendments unrelated to the QSAC report, the bill does amend the Criminal Code to criminalise conduct where a person falsely represents that they are a government agency or are acting on behalf of or with the authority of a government agency. Most stakeholders who made written submissions to the committee did not provide feedback on that new offence.

The bill also amends the Crimes at Sea Act to realign that act with the provisions of the Commonwealth legislation and also the blue card legislation to support the intended operation of the system. The department's understanding is that most stakeholders, again, who made written submissions to the committee did not address these amendments and those who did were generally supportive of the changes.

In conclusion of my opening statement, I thank you for the opportunity to brief the committee on the bill and we are, of course, happy to take any questions.

CHAIR: Why is it important that the amendments to the use of good character evidence for sexual offences be included in section 9?

Ms Struber: In relation to good character evidence, section 9 of the Penalties and Sentences Act provides the matters that the court must or may have regard to in imposing a sentence. It specifically deals with aggravating and mitigating factors. There is a companion section within the Penalties and Sentences Act, section 11, which outlines matters that the court may have regard to in determining whether somebody is of good character. Character is one of the matters that the court must have regard to under section 9 in imposing a sentence.

If the amendments in relation to good character could alternatively have been made to section 11 in terms of whether it is something that the court could consider, the difference is how that evidence is restricted in its use. If, for example, an amendment was made to section 11 prohibiting any consideration of that character evidence, it could not be used for any purpose. Good character evidence can be used to mitigate a sentence, but it can also have the effect of aggravating a sentence. If that good character actually assisted in the offending, it may have the effect of aggravating the sentence or offsetting some mitigating factors.

Because the amendments want to specifically prevent the court from mitigating a sentence based on that good character evidence, potentially reducing the severity rather than potentially making it a more serious offence, that is why the amendments are in section 9 to specifically provide that that character evidence cannot be used to mitigate rather than restricting its consideration as a whole.

CHAIR: For want of a better term, it is bad character evidence.

Ms Struber: It is not necessarily bad character evidence. It depends on how it is presented. It can actually go towards good character. As some submitters and witnesses have discussed, the character evidence can help or facilitate the offending. It is actually a positive standing within the community or a positive representation but, because that good character or positive perception actually assists, it can actually act as an aggravating factor, whereas bad character is usually more of a determination in relation to previous criminal history and that type of adverse previous conduct rather than positive previous conduct.

Mr RUSSO: How do you think the changes to the blue card system will improve its effectiveness?

Ms McCone: The amendments in the bill amend amendments to the working with children act made by the Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024. Following its passage we identified some issues in relation to the operation of those amendments. These amendments are to amend the amendment act so that, when it does commence, the reforms operate as intended. Specifically, the suspension provision was unintentionally narrowed by the amendment act. The bill reinstates the status quo so that the chief executive has the existing power to suspend on all of the offences currently in the working with children act.

Ms MARR: You have answered a lot of the questions I had for you today. There has been a lot about good character and the blue card. I will go to victim harm for a moment and ask a question about balance. Can you tell us why it is important that the recognition of harm is not limited to only include surviving victims? Would doing that have any unintended consequences?

Ms Struber: In relation to that amendment for sentencing purposes, one of the amendments is to ensure that the reason the court can impose a sentence is to recognise harm to a victim. At the moment it is something that the court will consider in determining a sentence, but it cannot be the purpose or the reason that the sentence is imposed. That proposed amendment to allow the court to impose a sentence for the purpose of recognising victim harm elevates the importance of that recognition in the sentencing process. It can occur if the victim is deceased or killed as a result of that offending behaviour. That is still harm that has been caused to the victim. Under the amendments, the court will be able to impose a sentence for the purpose of recognising that harm even though the person is no longer alive but has still experienced harm, both in the offending and obviously in the cause of that death. If the amendment were limited to only recognise surviving victims, then the court would not be able to impose a sentence for the purpose of recognising harm to a victim who was deceased as a result of the offending behaviour.

Ms MARR: Does that mean it would be a lesser sentence? Are we trying to prevent them from getting a lesser sentence by not recognising that?

Ms Struber: It would not necessarily result in a lesser sentence. That amendment goes to the purpose of a sentence; that is, the reason for which a sentence can be imposed. It does not necessarily increase or decrease the severity of the sentence; it is the purpose for which it could be imposed. At the moment, it can only be imposed for punishment, deterrence, denunciation, community safety and rehabilitation. While the victim is considered in that process, the harm to the victim cannot currently be the reason the sentence is imposed. That amendment changes that.

Ms MARR: Thank you for explaining that.

Mrs McMAHON: I have heard two different terms today, 'character reference' and 'character evidence'. We heard from earlier submitters that, whilst victim impact statements have rules and regulations about what can be included, often a character reference refers to the 'good bloke' or the neighbour and is not necessarily verified or fact based. It is opinion based. With these new amendments, are we still going to see the 'good bloke' reference as opposed to character evidence as part of consideration for rehabilitation and reoffending?

Ms Struber: They are two distinct concepts. In relation to good character evidence and character references, a character reference is one type of good character evidence. It could be a character reference, it could be evidence about standing in the community or contributions to the community. Previous criminal history is also a factor of good character evidence. A character reference is one form of good character evidence that can be considered.

In relation to the amendments, one of the things QSAC found in conducting its review was that the use of those three types of problematic character evidence—the character reference, standing in the community and contributions to the community—were problematic. It often arises in those sweeping statements like 'they're a good bloke'; 'they make significant charitable donations'. It is those wide, sweeping statements that are used in a generalised way. They are not targeted to a specific purpose. It is a sweeping statement for general use, kind of getting a vibe for the character of the offender. That is what QSAC identified as a problematic use.

By requiring that evidence to only be used for the purpose of rehabilitation or risk of reoffending, there needs to be that specific link made between the character evidence and how it will contribute to the risk of reoffending or the prospects of rehabilitation. QSAC considered that, by making that legislative change, it would direct legal practitioners and judicial officers to be more targeted in how that character evidence is presented to the court, how it is then permitted to be used by the court, and then how it is articulated by the court in describing how it has been used. By making those general,

sweeping statements used in a general sense, the amendments will prohibit that and it will alter the way that the evidence is presented. As QLS earlier mentioned, by not allowing that evidence to be relevantly considered by the court it is intended that that will change the practice of legal practitioners and the court to alter the way they present it and what is accepted in a sentencing hearing.

Mrs McMAHON: Just to confirm, are the amendments hoped to change the practices used in terms of how it is framed and how it is admitted?

Ms Struber: It is not hoped to, because the legislation will prohibit its use except for those purposes. Evidence will not be able to be submitted that they are generally a 'good bloke' or will not be able to be used in mitigation that they are generally a 'good bloke' because the court will need to be satisfied there is a link between that statement and how it would be relevant to their assessment of rehabilitation or reoffending. In the absence of that link, the court cannot use that evidence to mitigate. It will be prohibited by statute.

Mrs McMAHON: You do not share the concerns of earlier submitters that it is basically going to be the 'good bloke' evidence reframed in some way that links it to rehabilitation and reoffending?

CHAIR: Member, I think that question was answered by saying no. Just to clarify, would character reference letters that only reference the offender as a 'good bloke' be relevant under the changes?

Ms Struber: No, we do not consider that it would be relevant. There needs to be that linkage. It needs to be more specific and targeted.

CHAIR: Does that satisfy your question, member?

Mrs McMAHON: Thanks.

Mr FIELD: I note that some of the submissions recognise the importance of evidence of rehabilitation and the risk of reoffending but thought this evidence should be introduced by the defence rather than relying on character reference letters. Is it possible for the defence lawyer just to stand up and give this evidence independently?

Ms Struber: It is possible, but the court needs to be satisfied that the defence counsel has a reason to make that statement. It is often that linkage between, as the QLS was talking about, how long they have known them and what their experience with them is that can help the court get that contextual information to consider all of the circumstances and impose an individualised sentence. Defence counsel's experience of the offender will be quite limited in terms of their experience with them, their interactions with them during the court proceedings, so it would not give the same broad type of information for the court to consider in its sentence that would come from people who have known the offender for a longer time, what is their experience of them in different contexts, what is their history with them. That is why I guess character references fill a gap. Purely a defence counsel standing up and talking about their opinion would not necessarily have the same outcome.

Mr BERKMAN: You touched on this in answering the chair's question earlier, and that is specifically around evidence from some submitters and the role that good character or good standing in the community can play in facilitating particular offending. I want to clarify that nothing in the proposed changes will limit the scope for that contributory good standing or good character evidence to weight as an aggravating factor in sentencing; is that the case?

Ms Struber: That is right. Nothing in the amendments will alter that. The court will still be able to consider good character or abuse of power or abuse of trust as an aggravating factor in sentencing.

CHAIR: Moving back to a previous question about the blue card, is it fair to say that the amendments proposed in the bill are just correcting unintended consequences of previous legislation passed by the parliament?

Ms McCone: Yes, that is exactly what they are doing. They are just technical amendments to basically fix amendments made by the—I will call it WCOLA. Once that commences, it actually works as it was intended.

CHAIR: Can you broadly flesh out for us what the issues were and how this bill seeks to amend that?

Ms McCone: There are amendments in WCOLA that deal with the application to cancel a negative notice. The amendment act actually provides transitional arrangements for applications to cancel a negative notice that were undecided or withdrawn at the time of commencement. Under the section the chief executive may issue a working with children authority if the person applied to cancel a negative notice and made submissions under the former section 229. Basically, at the moment the amendment act will change the working with children act to provide that the chief executive may issue

a working with children authority if the person applied to cancel a negative notice, but in practical terms the chief executive must actually use this provision and must make that decision. It is a technical term just to reflect that this use of 'may' is not really reflective of the practice. The chief executive 'must' use that power.

There is another section in there. Currently, the act does not distinguish between the separate processes of approving an application to cancel a negative notice and the issuing of a working with children authority. Basically, Blue Card Services can make a decision to cancel a negative notice, and once that is done a person can then apply for a blue card. The act as drafted at the moment just says that the person kind of sidesteps that cancel-a-negative-notice process and goes straight to the issuing of a working with children authority. This makes it clear that it is actually a two-step process—cancel a negative notice and then a person may apply for a blue card. That fixes that up.

The other amendment I mentioned previously is the amendment to the suspension head of power in the act once we amend the provision to refer to the offences in schedules 2 or 4 of the act. Previously it referred to sections 15 or 16 of the act. Those sections were amended to include an age qualifier for the purposes of blue card assessing a decision about a person's suitability to hold a blue card. That was carried over to the suspension provisions unintentionally when we amended it to ensure that the chief executive can continue to suspend a card no matter the age of the person or the circumstances. This basically amends the act to provide that the status quo exists. The chief executive retains the existing power to suspend a blue card no matter the age of the person when they committed the offence, and the Queensland Police Service can continue to seize a suspended blue card no matter the age of the person at the time they committed the offence. I think those are basically the amendments in a nutshell.

Mr RUSSO: The submission from the North Queensland Women's Legal Service says that character references should also be restricted to sentencing for serious domestic violence and serious drug offences. What is your response to that suggestion?

Ms Struber: The amendments in the bill implement the recommendations of the QSAC report which were restricted to sexual offences. Any decision to expand the application of those limitations would be a policy decision for government.

Ms MARR: You have answered many of my questions. I will go to something that has not been the focus of any submissions: the Crimes at Sea Act amendments. Can you briefly indicate why these changes are important, please?

Ms Struber: The amendments to the Crimes at Sea Act are essentially to realign the Queensland legislation with the Commonwealth legislation. The crimes at sea legislation is part of a uniform legislation. The states and the Northern Territory, that have ocean borders, and the Commonwealth entered into an intergovernmental agreement to determine which jurisdiction would have jurisdiction in relation to crimes that happen at sea. It determines which legislation applies—so which criminal legislation applies and who has the responsibility to investigate and prosecute a particular proceeding. The purpose of the intergovernmental agreement and the crimes at sea legislation is to make who has jurisdiction to investigate and prosecute those offences clear.

What has happened over time is that the Commonwealth have amended their legislation to reflect changes that have occurred particularly in relation to treaties with Timor Leste. That has changed the jurisdictional boundaries between Timor Leste and Australia. That mostly affects the Northern Territory and Western Australia and not so much Queensland. The Commonwealth has also amended a different piece of legislation which is referred to in the Crimes at Sea Act, and the Queensland legislation currently reflects the old legislation. The amendments are largely technical in nature to ensure Queensland's legislation aligns with the Commonwealth legislation. It is meant to be uniform and consistent so it is just to make sure that we line up with the Commonwealth legislation.

Mrs McMAHON: Another part of the bill that we have not canvassed so far relates to the false representation of government agencies. I am interested to know how often this actually happens, what government agencies or positions are being falsely represented and what the legal recourse has been so far, other than perhaps a charge of fraud.

Ms Struber: We do not have any data on how often it is occurring. The issue particularly arose in the Commonwealth sphere in relation to the messages that went out purporting to come from Medicare in relation to an election. When that was reported to the Australian Federal Police, they investigated and it was determined that there was no offence that could be pursued in relation to that conduct because it related to representing, in that instance, a Commonwealth entity rather than an individual. The Commonwealth amended their legislation in response to that. This amendment is dealing with the situation where misinformation, particularly in relation to a pandemic or a natural

disaster, or misleading the public through falsely representing or speaking on behalf of a government agency could have adverse consequences. There is also in consideration of the increasing amount of government impersonation scams and phishing that is occurring. It is to ensure there is not a legislative gap and if that occurs there are appropriate mechanisms to prosecute. It is not necessarily an active issue; it is more of a preventative mechanism to ensure there is not a gap in the legislative framework.

CHAIR: The witness from Your Reference Ain't Relevant today stated that QSAC confused character evidence and character reference letters in their report and that character evidence is only a matter to be considered in a trial. I understand that section 9 requires a court to consider various factors at sentence including risks of reoffending and prospects of rehabilitation. Is their view correct, or is character evidence currently something that must be considered by the courts at sentence as well?

Ms Struber: Character evidence can be relevant both in the criminal trial and in the sentencing proceeding. Section 9 requires the court to have regard to character. It is through character evidence that it effectively has regard to that character. As we were discussing, character references are one form of character evidence. There is a range of other things that could form character evidence, but character evidence, or good character evidence specifically, can have a role both in the trial and in sentencing. It is not restricted only to the trial. The focus of the bill is the use of that good character evidence in the sentencing proceedings. There are different rules and restrictions on the use of character and good character evidence in the trial so different court rules govern whether good character evidence can be admitted in the trial.

In relation to the prospects of rehabilitation and reoffending, that is something that is considered in the sentencing proceeding rather than in the trial. In a criminal trial the focus is to establish whether or not the person is guilty of the offence, but when it gets to sentencing, that has been established and they have been found guilty of the offence or plead guilty to the offence. It is then looking at what is the appropriate sentence to impose considering a wide range of factors—the seriousness of the offence, the victim, the offender, their prospects of rehabilitation, the need for deterrence. All of those types of considerations come into play in the sentencing proceeding rather than in the criminal trial.

CHAIR: And now the harm caused to the victim?

Ms Struber: That is correct. It is now a sentencing purpose, or it will be.

Mr BERKMAN: Can you elaborate from the department's perspective on the concern submitters have expressed that good character evidence that would previously have been allowed before these changes will most likely just be presented in support of good prospects for rehabilitation and low risk of reoffending? Given that a large part of the purpose of these amendments, as I understand it, is to reduce or minimise the impacts of that evidence and its presentation on victim-survivors, how real is the risk that the same kinds of character references and character evidence will be presented in any case for alternative purposes?

Ms Struber: The focus of the amendments are really to restrict that, and to restrict the use of good character evidence. One of the focuses of QSAC was the generalised use of good character evidence. Even though it may have been considered by the court for determining whether there was a risk of reoffending, the bill will prohibit its use for any other purpose. It is not just that it 'could be' used for that but it can 'only' be used for that. So while some of the evidence that is currently presented and that may be permitted under the amendments that are proposed in the bill, it will need to be more targeted and specific. It is those general sweeping statements such as 'He's a good bloke' that will need to be specifically linked to why that is relevant to their prospect of rehabilitation or their risk of reoffending. While the overarching information may be similar, it will be presented in a much more targeted manner because it will need that specific link to rehabilitation and reoffending in the way it is presented and how relevant it can be to the court's consideration of the appropriate sentence to impose. Guiding the court in terms of how it articulates and describes how that evidence has been used will be changed as well because it will no longer be permitted to be used in that general sense of weighing whether they are or are not of good character; it will need to be specifically linked to the evidence has been used. It will have to be considered in a way that is specific to one of those purposes.

Ms Hughes: It will be incumbent on the legal practitioners and defence counsel to create that nexus when presenting the evidence. So the sweeping statements that are made now in many cases will not be able to make that nexus; ergo, will not be able to say they are 'a good bloke'. I think it will have the effect of creating a sort of focused limitation to help inform the court within a reasoned restriction. I think it will play out in that way in a courtroom scenario.

Mr BERKMAN: I was interested in the assertion from some witnesses today that ultimately, rehabilitative prospects and the risk of reoffending are questions for expert evidence, not loosely-based personal knowledge of a defendant. I am interested in two things. First of all, what is your response to that assertion? Secondly, how common is it for expert evidence to be led in respect of those rehabilitation and reoffending questions?

Ms Struber: The expert evidence is valuable in the sentencing proceedings. Ideally, yes, it may be preferable but, as QSAC noted in its report, it is not feasible for every sentencing proceeding in all regions to have that expert evidence. I guess it is also balancing the types of evidence that can be put before the court and the judicial discretion to appropriately use that evidence against potentially significant delays. If every sentencing proceeding needed expert evidence in order to inform prospects of rehabilitation or reoffending that could have an adverse impact for victims in terms of significantly delaying sentencing proceedings and the conclusion to their involvement in the criminal justice system. While there are ideal forms of evidence and an expert, professional or psychiatrist opinion may be more validated in those respects, it is getting the balance right between putting the evidence before the court and allowing them to consider it all and how it can be used in the sentencing proceeding.

CHAIR: Following on from that, is it fair to say that judicial discretion and the amendments in this bill are clear instructions to a judge in in terms of what to take into consideration? We are relying on them to interpret this legislation as it is intended and to make decisions based on that.

Ms Struber: That is right. The bill seeks to strike the balance between the current unrestricted use of the good character evidence and the complete restriction. It is putting some additional parameters for the judicial officers to consider in how they use that evidence but then, within those parameters, it is relying on judicial discretion in order to appropriately use it in the way it is intended, but the bill does statutorily limit the purposes for which the judicial officers can have regard to that evidence.

Mr FIELD: Some members of the public have today called for the complete abolition of good character evidence for all sexual matters, noting that these calls are stronger when the offending involves sexual offences against children. I understand that similar submissions were made to QSAC. Why was this approach not recommended by the government in accepting the recommendations in full through the drafting of the bill?

Ms Struber: A range of different submissions were made to QSAC, ranging from complete prohibition on the use of good character evidence to the other end of the spectrum, leaving it completely unrestricted in the way that it is. QSAC, in considering those divergent views, as well as other factors such as how the court is currently treating the evidence and the purposes for which it can be used, concluded that good character evidence has a legitimate role to play in sentencing and that a blanket prohibition may have adverse consequences in denying the court that information to consider, balancing that against the complete unrestricted use of that character evidence, particularly the problematic forms of character evidence. QSAC sought to balance those competing views and introduce some restrictions without introducing a complete prohibition, which would deny the court some information. As Leanne mentioned in the opening statement, this may also have unintended consequences because of the broad range of offences that can fall within categories even such as child sex offences. It allows the court to appropriately consider for each different offence, victim and offender, the relevant information in that particular proceeding and rely on judicial discretion within those restrictive boundaries to apply that good character evidence appropriately.

Ms MARR: We have gone over this a fair bit and we have a pretty good understanding of it, but is there any chance you can give us some examples where the restricted character evidence might be relevant—a scenario where it could be restricted?

Ms Struber: Good character evidence may be relevant in relation to family. This will depend on how it is presented to the court. A broad sweeping statement that they are a committed family man would not in itself be admissible because there is not that specific nexus to rehabilitation and reoffending, but if it were presented—and this comes down to how it is presented—in terms of they are committed to their family, they have the support, and this will assist them in their rehabilitation attempts and their reintegration into the community following their sentence, then that is where, by specifically linking it, the evidence could be more useful.

Similarly, in an employment context, merely saying that they are a good worker would not in and of itself be sufficient, but if that character evidence about their work and the fact that, despite the offending, their employer is prepared to continue their employment after they have served their sentence, or during their sentence if it is a suspended sentence, then that again may assist them with

rehabilitating, reintegrating in society, providing that structure and support to not reoffend. It really is context specific. Those examples would not necessarily be relevant in relation to every offence, every offender and every victim. It really needs to be tailored to the specific circumstance.

CHAIR: Why is it important that section 179K has been amended as proposed by the bill, and will this respond to concerns of some victims who feel that they have to provide a victim impact statement?

Ms Struber: The amendments to section 179K(5) respond to findings by the QSAC report that there was a perception from some victims that they were obligated or should make a victim impact statement, otherwise it would be assumed that there was minimal impact or no impact of harm suffered. Victims and advocacy groups gave feedback to QSAC that that was currently the perception. That was not the intended operation of the legislation. Section 179K is intended to be voluntary, and the subsequent provision does talk about the fact that it is not mandatory to provide a victim impact statement. It was those perceptions that were creating uncertainty for victims. It really is a clarifying provision to put it beyond any doubt that a victim is not obligated to provide a victim impact statement. Every victim is different and whether they choose to provide a victim impact statement is important to their self-determination and their journey. It is just a clarification that a decision by a victim not to provide a victim impact statement will not have any adverse inference drawn by the court.

CHAIR: There being no further questions, that concludes this public briefing. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed.

The committee adjourned at 12.33 pm.