



Speech By
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MEMBER FOR MAIWAR

Record of Proceedings, 17 September 2025

**PENALTIES AND SENTENCES (SEXUAL OFFENCES) AND OTHER
LEGISLATION AMENDMENT BILL 2025**

Second Reading

 **Mr BERKMAN** (Maiwar—Grn) (4.05 pm): I rise to speak on the Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill. I am generally supportive of the amendments made by this bill, but this is once again a circumstance where the proposed changes are no substitute for increased investment in addressing the impacts of sexual violence through therapeutic interventions and structural change and in genuine prevention through mass education and cultural change.

As others have mentioned, the central elements of this bill are around the admissibility of good-character evidence. Specifically, the bill limits the ways in which good-character evidence can be used as a mitigating factor in sentencing for sexual offences. The bill means that this evidence will only be admissible where it is relevant to the offender's prospects of rehabilitation or risk of reoffending.

There are additional limitations, including where a person is being sentenced for an offence against a child aged under 16. In a case such as this, the court cannot treat good-character evidence as a mitigating factor if this presentation assisted them to commit the offence. Good-character evidence can, and often does, include highly subjective, non-professional opinion of an offender's personal traits. As we know, the references might be given by family members or friends of the offenders. It is already within the sentencing court's discretion to include or exclude good-character evidence. However, the Queensland Sentencing Advisory Council found that, of 131 District Court rape cases sentenced between July 2022 and June 2023, almost 92 per cent had relied on good-character references. That same QSAC report also found that good character appeared to be given a lot of weight in more than a quarter of those cases. In that context, it is entirely appropriate and I would argue very important for parliament to intervene.

The question has been asked though: are these changes enough? Many stakeholder groups and individual community members submitted that the changes do not go far enough and object to any good-character evidence being permitted on sentencing. This was the submission put forward by a number of submitters, including the Queensland Sexual Assault Network, the Gold Coast Centre Against Sexual Violence, the Rape and Sexual Assault Research and Advocacy association, the Victims' Commissioner and an additional 204 individual submitters who specifically supported the submission of the Your Reference Ain't Relevant campaign. Those submissions highlighted the fact that offenders often use their presentation of good character to gain access to victims or their presentation creates opportunities to access victims.

The delivery of good-character references has a profoundly retraumatising effect on victim-survivors. Put simply, the opinions held by friends, family and colleagues of offenders are not relevant in the context of sexual offending. As the Gold Coast Centre Against Sexual Violence said in their submission—

What is needed is a robust recognition that good character evidence is no substitute for accurate and reliable professional assessment of risks of recidivism and prospects of rehabilitation.

I also draw attention to the submission of Harrison James, survivor and co-founder of the Your Reference Ain't Relevant campaign. He says—

To be clear, no one is arguing against forgiveness, redemption, or acknowledging an offender's capacity to change. But those considerations belong in rehabilitation programs and parole decisions, not in the moment of sentencing for a grave offence.

I am often concerned about legislation that restricts the discretion of judicial officers to balance the facts of a particular case, especially given the huge variation in the relevant facts and circumstances of the various cases that come before them. However, this has to be seen in the context of a legal system that has historically failed victim-survivors and bought into myths and broader social stereotypes around sexual assault and rape. For that reason, I strongly support the submission of the Victims' Commissioner and their call for programs of judicial education. The court process is incredibly retraumatising for victim-survivors and it is vital that judicial officers overseeing these proceedings are adequately trained to minimise the harm to victim-survivors to the greatest extent possible.

The bill introduces a new purpose for sentencing into the sentencing guidelines of the Penalties and Sentences Act, specifically to recognise the harm done by the offender to a victim of the offence. The new purpose is in addition to the existing purposes, which, generally speaking, are to punish the offender in a way that is just in all the circumstances, to provide conditions for rehabilitation, for general and specific deterrence, to denounce the conduct and to protect the community from the offender. This new purpose will apply not just in the context of sexual offending but in relation to all offending. Courts are already directed to have regard to any physical, mental or emotional harm done to a victim when sentencing an offender. Of course, it is appropriate for harm done to victims to be considered in the sentencing process, but I am concerned about the way this amendment elevates the treatment of that harm—that is, it elevates it from a consideration in sentencing to a purpose of sentencing. This, I would suggest, is reflective of this government's preference for retributive punishment over rehabilitation and, for me, it rings some quite significant alarm bells.

The bill also introduces a provision about the treatment of a victim impact statement or the absence of such a statement. It makes explicit that just because a victim impact statement is not given or because details of the harm caused to a victim are otherwise absent that does not, in and of itself, imply for the purpose of sentencing that the offence caused little or no harm to the victim. Broadly speaking, I support measures that will support a victim in whatever decision they make about their involvement in proceedings. The decision not to give a statement should not be considered to imply that the offences had no impact. Notably, this amendment will apply in relation to the sentencing of all matters, not just sexual offending.

Legal Aid Queensland referred to its practitioners' experience that 'the courts are unlikely to infer that little or no harm has been caused to the victim as a result of an absence of' a victim impact statement. They submit that this amendment is not necessary. When coupled with the newly introduced purpose of sentencing—again, to recognise the harm done to a victim—there is some additional risk around courts being tasked with sentencing for the purpose of recognising an impact where there is, in fact, no evidence of that impact before the court. Given the potential in that dynamic for unintended consequences in the way those provisions interact, I would urge the government to continually monitor and review the impact of these changes.

The bill also includes an aggravating factor for the purpose of sentencing a sexual assault against a child. The courts will retain discretion not to employ this in exceptional circumstances—for example, where the victim and offender are especially close in age. I support that change and, as I have indicated, I broadly support the changes proposed in this bill, but we must be mindful of, and I urge the government to continue to monitor for, potential unintended consequences and continue to reflect on the role that expert evidence might play when we are contemplating prospects of rehabilitation and the risk of reoffending, and in any way possible we should be working in the future to ensure that the way that evidence is treated by the court minimises any retraumatising effect on victims.

I will add that, like the opposition members, I see no reason to delay the commencement of these provisions. The amendment proposed to ensure the earliest possible commencement is one that I support. Due to various unforeseen sickness in my family and caring obligations, there is every possibility I might not be here to cast my vote in support of that later this evening, but I want to make that clear on the record now.