



Speech By
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MEMBER FOR NOOSA

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

Second Reading

 **Ms BOLTON** (Noosa—Ind) (8.18 pm): As we have heard, the bill makes some small amendments to the Crimes At Sea Act and administrative requirements under the working with children act, which were welcomed by Luke Twyford, the Queensland Family and Child Commission's Principal Commissioner; however, the main purpose is to implement four recommendations of the Queensland Sentencing and Advisory Council's report titled *Sentencing of sexual assault and rape: the ripple effect*. The first three of these are (1) to introduce a statutory aggravating factor for rape and sexual assault against children aged 16 or 17 years; (2) to expand the sentencing purposes to include recognition of harm caused to a victim of an offence; and (3), to clarify that no inference may be drawn from the absence of details of harm caused to a victim.

The fourth, limiting the court's treatment of good character as a mitigating factor in sentencing persons convicted of offences of a sexual nature, is the most substantial and generated the largest response from stakeholders, particularly victims of crime or victim-survivors. I will focus my contribution on this.

Under current law, the Penalties and Sentences Act requires that a court, when sentencing an offender, must have regard to the presence of any aggravating or mitigating factors, which could include evidence of good character. This can take many forms, including a character reference from a family member, friend or employer, with the idea that evidence of good character may assist the court as part of the sentencing decision.

Dr Rachael Burgin, the CEO of the Rape and Sexual Assault Research and Advocacy organisation, said at the public hearings that good-character evidence suggests that committing these offences is more acceptable where an offender can establish unrelated, supposedly redeeming qualities that failed to prevent the offending in the first place. In addition, that supposed good character has no relevance to the prospect of rehabilitation or risk of reoffending. The Queensland Sexual Assault Network submitted that the use of good-character evidence is highly traumatic and offensive to victim-survivors as it demeans, dismisses and minimises their experience, particularly for rape and sexual assault victims.

In their report, QSAC concluded that problems arise with good-character evidence that contains subjective or a non-professional opinion about a sentenced person's personality traits. This includes their standing in the community and contributions to the community, and they accordingly recommended reforms to the use of good-character evidence.

The amendments in this bill attempt to limit, although not eliminate, the use of good-character evidence in sentencing decisions. First, courts do not have to take into account any good-character evidence presented. Second, if they do, it must be relevant to the offender's prospects of rehabilitation

or risk of reoffending. Third, they must also consider the seriousness of the offence and the harm to the victim-survivor. Fourth, if the offence is against a child under 16, the court must not treat an offender's good character as a mitigating factor if it assisted them to commit the offence.

The reality is that there are new restrictions on the use of good-character evidence. However, it still can be used in specific circumstances. Some submitters—such as the QFCC, the Queensland Council of Social Service and Voice for Victims—broadly supported the proposed reforms. However, a larger number suggest that they do not go far enough in addressing concerns and advocate for the removal of all character references for the sentencing of sexual offenders, domestic violence offenders, serious drug offenders and child sex offenders.

The Queensland Law Society did not support the amendments, observing that removing character evidence, except in particular circumstances, would limit the court's access to information that may be vital in formulating a sentence that balances all relevant features and is tailored to the individual circumstances. QCOSS raised concerns that further charges could go too far in limiting access to procedural fairness and the impact further reforms could have on incarceration rates. This includes of Aboriginal and Torres Strait Islander adults and young people, who are already disproportionately impacted by the criminal and youth justice systems.

Ultimately, we must give priority to victims of crime—whose submissions, while distressing, offer the voice of those directly impacted—and ensure their trauma and perspectives are given priority in the legal process, particularly during sentencing and parole decisions. This bill, even though it is seen as falling short to many, is a step in the right direction and, as QCOSS suggested, we need further work on guidance for judicial officers and in court bench books and so forth. In addition, the government should amend the bill to ensure there is a statutory post-implementation review conducted by an appropriate independent authority once sufficient experience with the amendments has been obtained. If there is no valid reason for why these amendments regarding character evidence should not be brought forward as soon as possible, I am not sure why that would not occur.

I want to thank the committee, the submitters and department attendees at the hearing and public briefing for their examination of this bill. To all victim-survivors, there can be nothing harder than hearing or reading how someone who has impacted your life forever in a most traumatic way is described as a 'good person'. Ultimately, good people, regardless of contributors to offending, know that to harm others is not good and they must take responsibility by giving their own character reference and commitment, including the steps they have taken and will continue to take to make sure they never harm anyone again.