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**Petition to Ban Evidence of Previous Good Character from
Consideration in Sentencing Sexual Offenders.**



THE ROAD TO HEALING

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This submission has been written by Kassandra-lee Lomas and Sam Troth on behalf of The Road To Healing Aotearoa. For any questions relating to the petition or this submission please email us at theroadtohealingaotearoa@gmail.com .

About The Road To Healing Aotearoa

The Road To Healing Aotearoa is a survivor-led movement founded by survivor and advocate Sam Troth. Our work focuses on supporting survivors of sexual harm, strengthening community responses, raising awareness and advocating for system-level change in Aotearoa New Zealand.

Our organisation is grounded in lived experience and works across survivor support, peer connection, public education, community outreach and justice reform. Through offering direct support, running national awareness and advocacy campaigns, petitions, workshops and community engagement, The Road To Healing Aotearoa seeks to strengthen survivor voices, and improve pathways to healing, accountability and justice.

Since 2022, founder Sam Troth has led a series of national awareness campaigns across Aotearoa, including Bluff to Cape Reinga hīkoi in 2022, East Cape to Taranaki in 2023, a 2,000km South Island cycle tour in 2024, Cape Reinga to Parliament hīkoi in 2025, and a South Island tour where we connected with survivors and support organisations in 2026.

The Road To Healing Aotearoa also works directly alongside survivors through peer-based support, outreach, advocacy and connection with wider services and support pathways. Justice reform has become an important part of this work. The Road To Healing Aotearoa has led parliamentary petitions concerning sentencing for sexual offending, including the current campaign seeking to remove previous good character as a mitigating consideration in sexual offence sentencing. This work forms part of our organisation's broader commitment to a justice system that recognises the impact of sexual harm and meaningfully includes survivor perspectives.

This submission is informed by The Road To Healing Aotearoa's lived-experience advocacy, engagement with survivors and their whānau, consultation with professionals working in the sexual violence and justice sectors, and research into New Zealand sentencing law and comparable reform including Australian YourReferenceAintRelevant campaign led by Harrison James and Jarad Grice.

Executive Summary

The Road To Healing Aotearoa seeks an offence-specific amendment to the Sentencing Act 2002 so that previous good character can no longer operate as an independent mitigating factor when sentencing sexual offending. The reform should apply across the relevant sexual-offence framework and should not be limited to offending against children, penetrative offending, physical-contact offending, or offending involving a formal position of trust.

The central principle of this submission is that an offender's reputation, professional standing, community status or history of socially approved conduct should not itself reduce the sentence imposed for proven sexual offending. Previous good character is a broader evaluative concept than criminal history. It can encompass reputation, community standing, professional success, meritorious conduct, character references and positive contribution to society. These matters should be distinguished from rehabilitation, remorse, treatment, professional assessment, personal circumstances and future risk.

Under current New Zealand law, S 9(2)(g) of the Sentencing Act expressly recognises evidence of previous good character as a mitigating factor. New Zealand appellate authority has established that a

clean criminal record can constitute evidence of previous good character, while the amount of recognition ultimately given remains discretionary. Courts may reduce, limit or refuse good-character mitigation depending on the nature, duration and circumstances of the offending.

The cases examined in this submission demonstrate considerable variation in how that discretion operates. Previous good character has produced measurable sentence reductions in some sexual-offence cases, while being substantially limited or rejected in others. The case law also demonstrates that rehabilitation, treatment, professional assessment, personal circumstances and risk can be considered separately from previous good character. The issue raised by this petition is therefore not whether judges are capable of refusing good-character mitigation. They are. The question is whether favourable reputation and socially approved conduct should continue to have independent mitigating value in sexual-offence sentencing at all.

Sexual offending raises particular concerns in this context. New Zealand evidence shows substantial under-reporting, delayed disclosure, significant attrition between reporting and conviction, and high levels of offending by people known to their victims. Sexual offending can also occur within trusted family, professional, caregiving and community relationships. A person may therefore maintain a positive public reputation while simultaneously committing serious sexual offending in private.

For that reason, a clean criminal record should not be asked to establish more than it can prove. It establishes the absence of previous recorded convictions. It does not establish the absence of previous sexual offending, and it should not automatically establish broader moral or personal good character. The Road To Healing Aotearoa does not suggest that an offender without previous convictions should be presumed to have offended previously. Our position is that absence of conviction and previous good character are not equivalent concepts.

The evidence concerning sexual recidivism reinforces this distinction. Research identifies specific empirically relevant factors associated with sexual reoffending and supports structured approaches to risk assessment. General reputation, professional standing, parenting, employment and favourable character references are not equivalent to empirical assessment of sexual-recidivism risk. While absence of previous sexual convictions may be associated with lower observed recidivism than a history of previous sexual convictions, that does not establish general good character, absence of previous offending or an individual offender's future risk.

Character evidence may nonetheless be completely genuine. An offender may have contributed positively to their community, maintained employment, supported family and friends, performed valuable professional work and been highly regarded by people who knew them. The difficulty is not necessarily the truth of those positive accounts. It is the sentencing consequence drawn from them. A character reference may accurately describe one part of an offender's life without establishing how they behaved towards the victim, whether offending occurred privately, whether they have rehabilitated, or whether they present a low risk of future sexual offending.

Survivor experience also forms an important part of the submission. New Zealand Ministry of Justice research has recorded survivor concerns about character references, the volume of offender-focused material available at sentencing, and reductions associated with an offender being regarded as a good parent, good community member or person of good character. The Road To Healing Aotearoa's own consultation identified similar themes of invalidation, diminished trust, distress, and concern that an offender's positive reputation could be placed in tension with the survivor's account of harm. These findings do not establish that every survivor experiences character evidence in the same way, but they

demonstrate that previous-good-character mitigation is not experienced as neutral by all survivors, whānau and professionals.

Comparable Australian reforms demonstrate that previous good character can be restricted or removed without eliminating individualised sentencing. Australian jurisdictions have adopted several approaches, including excluding good character where it facilitated offending, limiting its use to rehabilitation or reoffending risk, and removing good character as an independent mitigating factor while preserving other sentencing considerations separately. This comparative experience supports the distinction made throughout this submission between good character, criminal history, rehabilitation and risk.

The Road To Healing Aotearoa therefore proposes that previous good character cease to operate as an independent mitigating factor when sentencing sexual offending. The exclusion should be drafted broadly enough to prevent the same concept being reintroduced under labels such as reputation, community standing, professional distinction, civic contribution, meritorious conduct or perceived moral character.

At the same time, the reform should expressly preserve evidence independently relevant to rehabilitation, treatment, remorse, professional risk assessment, personal circumstances, cultural and whānau background, criminal history and other recognised sentencing considerations. The purpose of the reform is not to remove individualised sentencing. It is to remove the proposition that an offender's positive reputation or socially approved conduct should itself reduce the sentence imposed for proven sexual offending.

A person's reputation, professional standing, community status or history of socially approved conduct should not diminish the seriousness of sexual offending or the harm caused to another person.

The Reform Sought

The Road To Healing Aotearoa seeks legislative reform so that evidence of an offender's previous good character cannot be taken into account as a mitigating factor when sentencing a person convicted of sexual offending. We seek this reform across all sexual offences.

A person's reputation, professional standing, community status, or history of socially approved conduct should not diminish the seriousness of the offending or the harm caused to another person.

For the purposes of this submission, it is important to distinguish previous good character from other sentencing considerations. Previous good character may include an offender's personal or professional reputation, meritorious conduct, perceived moral qualities, and standing in or contribution to their community. Character references are one way in which this material may be presented, through evidence from family members, friends, employers, colleagues, or members of the community describing the offender and their character.

This is different from evidence concerning rehabilitation, including treatment, professional assessments, engagement with rehabilitation programmes, safety planning, accountability and changed behaviour. It is also different from professional assessment of risk, where appropriately qualified professionals assess matters relevant to rehabilitation, future risk and reoffending. These concepts should not be treated as interchangeable.

The Road To Healing Aotearoa also distinguishes between lack of previous convictions and previous good character. The fact that an offender has no previous convictions is a fact about their recorded criminal history. It should not be automatically converted into a broader conclusion that the offender is therefore of good character.

Complete removal as a mitigating consideration

The Road To Healing Aotearoa's position is that previous good character should not merely be restricted or given less weight in sexual offence sentencing. It should be removed as a mitigating consideration altogether.

Any legislative reform should also prevent substantially the same material being reintroduced under different descriptions, including:

- Reputation;
- Community standing;
- Professional distinction;
- Civic or community contribution;
- Meritorious conduct;
- Perceived moral character; or
- General social respectability.

The purpose of the reform would be undermined if material excluded as 'previous good character' could simply be relied upon under another label.

What the reform would not remove

The proposed reform is not intended to prevent courts from considering genuinely relevant evidence concerning:

- Rehabilitation;
- Remorse;
- Treatment;
- Psychological or psychiatric assessment;
- Professional assessment of reoffending risk;
- Safety planning;
- Personal circumstances;
- Factors explaining or contributing to the offending where legally relevant; or
- Any other mitigating consideration available independently of previous good character.

New Zealand case law demonstrates that these matters are capable of being considered separately. In *Law v R* [2024] NZHC 1849, previous good character was treated separately from remorse, rehabilitation, psychiatric assessment, treatment and an offender's personal history. In *R v Seddon* [2025] NZDC 11774, previous good character was also treated separately from rehabilitation, treatment programmes, safety planning and professional assessment.

A legislative removal of previous good character therefore does not require the removal of evidence about rehabilitation, risk or other genuinely relevant personal circumstances.

Why the reform should apply to all sexual offences

The proposed reform should not be limited to offending against children, penetrative offending or offending involving physical contact.

Sexual offending can take a range of forms, but the offender's positive reputation or standing in other areas of their life does not diminish the violation experienced by the victim. This principle applies whether the victim is a child or an adult and whether the offending involves physical contact, grooming, digital conduct or child sexual exploitation material.

Offending involving the possession, access, production or distribution of child sexual exploitation material should not be treated as detached or victimless conduct. Such material records and perpetuates the sexual abuse and exploitation of children. Previous good character should not operate as an independent basis for reducing a sentence in those cases.

Why complete removal rather than limitation

The Road To Healing Aotearoa seeks complete removal because previous good character does not necessarily establish matters that are directly related to culpability, rehabilitation or future risk.

A person may genuinely be respected within their community, successful professionally, supportive of family and friends, or make a positive contribution while also having committed serious sexual offending. Positive public reputation and harmful private conduct are capable of existing at the same time. Character references also reflect what the referee has personally observed or believes about the offender. A referee may genuinely know the offender, but know only one part of their life. Even accurate evidence of an offender's positive qualities does not necessarily establish that the offender has rehabilitated, presents a lower risk of sexual reoffending, has accepted responsibility or is of legally relevant 'good character' in relation to the offending before the court.

New Zealand sentencing law already provides other mechanisms through which courts can consider genuine rehabilitation, remorse, risk, personal circumstances and professional evidence.

For these reasons, the central question raised by this petition is not whether an offender may possess positive qualities. They may. The question is whether these positive qualities should themselves reduce the sentence imposed for proven sexual offending. The Road To Healing Aotearoa's proposed reform is therefore narrow: Previous good character should cease to operate as an independent mitigating factor in sexual-offence sentencing, while other genuinely relevant sentencing considerations remain available to the court.

Current New Zealand Legal Framework

The central legislation governing sentencing in New Zealand is the Sentencing Act 2002. For the purposes of this submission, the most relevant provisions are those concerning the purposes and principles of sentencing, aggravating and mitigating factors, previous good character, victim interests, pre-sentence information and personal, whānau, community and cultural circumstances.

Purposes and principles of sentencing

Section 7 sets out the purposes for which a court may sentence or otherwise deal with an offender. These include:

- Holding the offender accountable for the harm done to the victim and the community;
- Promoting in the offender a sense of responsibility for, and acknowledgement of, that harm;
- Proving for the interests of the victim;
- Denouncing the conduct;
- Deterring the offender or others from committing the same or similar offending;
- Protecting the community; and
- Assisting in the offender's rehabilitation and reintegration.

Section 8 sets out principles that must be taken into account when sentencing. These include the seriousness of the offending and information concerning the victim's needs, interests and the effects of the offending.

These purposes and principles are relevant to this petition because previous good character operates within a framework that also requires courts to consider harm, accountability, victim interests, denunciation, deterrence, community protection and rehabilitation.

Aggravating and mitigating factors

Section 9 requires the court to take applicable aggravating and mitigating factors into account.

Aggravating factors that may be particularly relevant in sexual-offence cases include:

- Actual or threatened violence;
- Persistent or repetitive behaviour towards a victim over a prolonged period;
- The extent of harm resulting from the offending;
- Abuse of a position of trust or authority; and
- Premeditation.

The mitigating factor at the centre of this petition is S 9(2)(g): 'any evidence of the offender's previous good character'. This provision matters because previous good character is not simply material that a sentencing judge may happen to hear. It is expressly recognised within the statutory framework as a mitigating factor.

New Zealand appellate authority has interpreted S 9(2)(g) to mean that:

- A clean criminal record can constitute evidence of previous good character;
- Previous good character may be considered where applicable;
- The amount of recognition remains discretionary; and
- The nature, duration and circumstances of the offending can reduce or negate the weight ultimately given to it.

These principles have been developed through authorities including *R v Hockley* [2009] NZCA 74, *Manawaiti v R* [2013] NZCA 88, *Rana v R* [2014] NZCA 468, *Taylor v R* [2017] NZCA 574 and *Britow v R* [2017] NZCA 229.

A clean criminal record can therefore become:

No previous conviction > Evidence of previous good character > potential sentencing mitigation.

The Road To Healing Aotearoa's concern is with that final step. The absence of previous convictions may be relevant to an offender's criminal history, but it should not automatically establish a broader entitlement to mitigation on the basis of good character.

The interaction between aggravation and previous good character

Section 9 can require a sentencing court to consider, within the same sentencing exercise, aggravating circumstances such as:

- Harm to the victim;
- Repeated or prolonged offending;
- Abuse of trust or authority; and
- Premeditation.

While also considering evidence of the offender's previous good character as mitigation.

This creates an important issue in sexual offence sentencing where the offender's reputation, standing, authority or trusted position may have existed alongside, or formed part of the circumstances surrounding the offending.

The question raised by this petition is not whether aggravating factors should cease to be weighted against mitigating factors generally. It is whether previous good character should continue to have independent mitigating value in sexual-offence sentencing at all.

Victim interests within the statutory framework

Victim interests appear throughout the Sentencing Act.

Section 7 includes providing for the interests of the victim as a purpose of sentencing. Section 8 requires the courts to take account of information concerning the victims needs, interests and effects of the offending. Section 9 also recognises the extent of harm resulting from the offence as an aggravating consideration.

The operation of previous good character therefore takes place within a statutory framework that simultaneously requires recognition of the harm caused and the interests of the victim.

Pre-sentence reports and other offender information

Removing previous good character as a mitigating factor would not leave courts without information about an offender's circumstances or rehabilitation.

Under S26, the court may direct the preparation of a pre-sentence report for an imprisonable offence. Such reports may include information concerning:

- Personal, family, whānau, community and cultural background;
- Social circumstances;
- Factors contributing to the offending;
- Rehabilitative needs; and
- Restorative justice information and outcomes.

Section 27 separately allows information to be provided concerning an offender's personal, family, whānau, community and cultural background, as well as the support available to help prevent further offending.

These provisions demonstrate that previous good character is not the only mechanism through which the court can understand an offender as a whole person. Evidence concerning rehabilitation, cultural and whānau circumstances, treatment, support, personal history and factors relevant to future offending can contribute to be considered independently.

The current 40% cap on personal mitigating factors

The sentencing framework was amended in 2025 to introduce a general 40% cap on reductions to a sentence of imprisonment under applicable personal mitigating factors. Section 9Q now provides that, subject to statutory exceptions, total reductions under those factors must not exceed 40% of the sentence.

That amendment regulates how much personal mitigation may reduce a sentence overall. It does not answer the separate question raised by this petition: Should previous good character itself remain an available mitigating factor when sentencing sexual offending? A cap on the total mitigation does not determine whether every individual mitigating factor within that calculation should continue to apply.

What the legal framework tells us

The current statutory framework establishes that:

- Previous good character is expressly recognised as a mitigating factor under S 9(2)(g);
- A clean record can constitute evidence of previous good character under existing case law;
- Good character operates alongside sentencing purposes concerning harm, accountability, victim interests, denunciation, deterrence, rehabilitation and community protection;
- Sexual offending may also involve aggravating circumstances such as harm, repetition, premeditation and abuse of trust or authority;
- The Act provides separate mechanisms for considering rehabilitation, personal circumstances, whānau and cultural background, professional assessment and support; and
- Removing previous good character would therefore not require removing those other forms of relevant sentencing evidence.

New Zealand Case Law

New Zealand case law has developed a clear body of principles around what constitutes previous good character, when it must be considered and how much weight it may receive at sentencing.

The authorities establish that:

- A clean criminal record can constitute evidence of previous good character;
- Absence of previous convictions is not treated merely as the absence of an aggravating factor;
- Positive contribution to society can strengthen a claim to good character beyond simply having no convictions;
- Previous good character does not attract any fixed percentage of mitigation;
- The amount of credit remains highly discretionary and has been described as a matter of 'impression';

- Duration, repetition and the nature of the offending can reduce or entirely negate the weight given to good character; and
- Rehabilitation is one rationale underlying good character mitigation, although rehabilitation can also be assessed independently through other evidence.

Core appellate authorities

In *R v Hockley* [2009] NZCA 74, the Court of Appeal rejected the proposition that an absence of previous convictions was simply the absence of an aggravating factor. A clean record was capable of constituting evidence of previous good character and was therefore potentially worthy of recognition at sentencing. The Court also emphasised the extent of any allowance could be limited by the duration and nature of the offending and other circumstances.

Manawaiti v R [2013] NZCA 88 developed the rationale further. The Court identified considerations including an offender's apparent 'fall from grace', greater prospects of rehabilitation, community involvement and potentially reduced likelihood of reoffending. It also distinguished between a claim based merely on the absence of convictions and one supported by positive contributions to society. The amount of recognition remained 'very much a matter of impression'.

In *Rana v R* [2014] NZCA 468, the Court held that it was an error to treat the absence of previous convictions as merely the absence of an aggravating factor. However, the character references themselves did not justify additional credit where there was no particularly positive contribution to society, the offender was simply a first offender, there was no remorse and probation assessed the offender as presenting a high risk of reoffending.

Taylor v R [2017] NZCA 574 confirmed that S 9(2)(g) makes previous good character a sentencing consideration where applicable. The court again referred to the 'fall from grace' rationale and the possibility that previous good character may indicate greater rehabilitation potential or reduced likelihood of further offending. It also recognised that accumulated or repeated offending can undermine both the claim to good character and the proposition that the offending was an isolated lapse.

In *Britow v R* [2017] NZCA 229, the court approved an approach in which good character could be counterbalanced by the duration and repetition of the offending. The decision reinforces that prolonged offending, limited evidence of positive contribution, lack of remorse or insight and repeated conduct can significantly weaken or eliminate the basis for good character credit.

Together, these authorities establish the current legal position: previous good character is recognised in law, but the weight given to it is highly fact-dependent.

How good character operates in sexual-offence cases

The practical effect of these principles can be seen across a number of sexual-offence sentencing decisions.

In *Ali v R* [2012] NZCA 241, the offender was sentenced for repeated sexual and violent offending against children. Previous good character, based on the absence of prior convictions, resulted in a six-month reduction from an eight year starting point.

In *Charteris v R* [2021] NZHC 1171, the offending involved sustained sexual abuse of a child within a relationship of trust. Despite the seriousness and duration of the offending, the Court allowed a one-year reduction for good character and lack of previous convictions. This case illustrates that serious and sustained sexual offending does not necessarily prevent good character mitigation from happening.

In *R v Wilson* [2018] NZDC 7462, the offender was a caregiver who committed repeated sexual offending against vulnerable young women over approximately six years. Despite the duration of the offending and breach of trust, the sentence included a reduction of one and a half years for good character and lack of relevant convictions.

By contrast, in *R v Griffiths* [2025] NZHC 2737, a 10% reduction for previous good character was sought but rejected. The Court considered the prolonged nature of the offending against a vulnerable young person inconsistent with treating the conduct as a momentary lapse.

Similarly, in *R v Newton* [2026] NZDC 2774, the offender relied on good character and lack of previous convictions, but the court rejected a good character reduction because the offending itself was fundamentally inconsistent with the proposition that the offender was a person of good character.

These cases demonstrate that the same legal framework can produce substantially different outcomes depending on how the sentencing judge assesses the relationship between the offender's previous reputation and the offending itself.

What character references actually establish

Several cases also raise questions about the evidential value of character references.

In *R v Diamond* [2026] NZDC 4628, character references and letters from people close to the offender were before the Court. The judge questioned how much the referees actually knew about the offending and whether their assessment of the offender would have remained the same had their own child been the victim. No reduction for previous good character was given.

In *R v Jaz* [2023] NZDC 18297, extensive character references described the offenders as kind hearted, decent and respectful. The Court recognised that the references demonstrated how the offenders behaved towards the people writing them, but distinguished that from how they treated their victims. Despite the seriousness and scale of the offending, each offender still received a six-month reduction for good character.

These cases illustrate an important distinction: Evidence that an offender has treated some people well does not necessarily establish how they behaved towards the victim, what occurred in private, whether they present a low risk of sexual reoffending, or whether they have rehabilitated. A person may genuinely be a supportive family member, reliable employee, respected professional or valued community member while also having committed serious sexual offences.

Good character and rehabilitation are capable of being treated separately

New Zealand case law also demonstrates that removing previous good character would not require the removal of genuine rehabilitation or professional assessment.

In *Law v R* [2024] NZHC 1849, previous good character received a 20% reduction, while remorse and rehabilitation received a separate 10% reduction. Psychiatric assessment, WellStop involvement and the offender's own history of sexual abuse were also considered separately.

In *R v Seddon* [2025] NZDC 11774, the offender received a 10% reduction for previous good character and a separate 20% reduction for rehabilitation. The rehabilitation evidence provided included SAFE participation, safety planning, group and individual sessions and professional assessment.

Similarly, *Thompson v R* [2023] NZCA 3, involved character references alongside a PAC report, cultural report, victim impact material and separate evidence concerning rehabilitation and personal circumstances.

These cases reinforce the distinction made earlier in this submission between:

- Previous good character;
- Rehabilitation;
- Professional assessment;
- Personal and cultural circumstances; and
- Future risk.

They are capable of operating as separate sentencing considerations.

Patterns across case law

Across the cases reviewed, several patterns emerge.

First, absence of previous convictions and previous good character are frequently treated as connected concepts. However, a clean record does not automatically guarantee a deduction. Courts may limit, offset or refuse good character credit depending on the circumstances of offending.

Second, duration, repetition and seriousness matter. The longer and more persistent the offending, the harder it becomes to characterise the conduct as isolated or genuinely 'out of character'.

Third, character references do not necessarily establish everything claimed on the offender's behalf. They may accurately describe the offender's conduct toward the referee while providing limited information about conduct toward victims, private offending behaviour, rehabilitation or future risk.

Fourth, rehabilitation does not depend upon the continued availability of previous good character. Courts already receive and assess separate evidence concerning treatment, professional assessment, remorse, personal circumstances, cultural background and rehabilitation.

Finally, the cases demonstrate considerable variation. Good character mitigation has been accepted in some cases and rejected entirely in others, even where serious sexual offending, repeated conduct or breaches of trust were present.

What the case law tells us

The Road To Healing Aotearoa does not suggest that courts are currently incapable of limiting or refusing good character mitigation. The case law demonstrates that they can.

The issue raised by this petition is different.

Existing law requires previous good character to remain available for consideration where applicable, while leaving the weight ultimately given to it to judicial assessment. The cases reviewed show that:

- A clean record can amount to evidence of previous good character;
- Previous good character can result in a measurable reduction in sentence;
- The same factor can be substantially reduced or rejected depending on the case;
- Character evidence may coexist with serious and prolonged sexual offending;
- Genuine rehabilitation and risk evidence are already capable of being assessed separately.

The central policy question is therefore: Should previous good character continue to have independent mitigating value at all when sentencing sexual offending? That is the issue this proposed reform seeks to address.

Why Sexual Offending is Different in This Context

Sexual violence is substantially under-reported

The New Zealand Crime and Victims Survey (NZCVS) is particularly important because it captures both reported and unreported victimisation rather than relying solely on Police data. The Ministry of Justice describes the NZCVS as a key source for understanding the extent of crime experienced in New Zealand, including offending that is never reported to Police.

In 2025:

- 1.6% of adults experienced at least one incident of sexual assault, approximately 71,000 adults;
- There were approximately 213,000 sexual assault incidents;
- 16% of sexual assault victims reported at least one assault to police; and
- 14% of sexual assault incidents were reported to Police.

These figures demonstrate that Police and conviction statistics do not represent the full extent of sexual offending. There is a substantial gap between sexual assault occurring, victims reporting, Police investigation, prosecution, conviction and sentencing. This becomes directly relevant where a person reaches sentencing with no previous convictions and that clean record is treated as evidence of previous good character.

A clean criminal record establishes that a person has not previously been convicted. It cannot establish that they have never previously sexually offended, particularly in an offence category where a substantial proportion of victimisation does not enter Police statistics.

The 'dark figure' of sexual violence

The 2025 University of Canterbury and University of Waikato report 'To Report Or Not to Report? Understanding the Impacts of Reporting Decisions for Family and Sexual Violence in Aotearoa New Zealand' examined reporting and non-reporting of family and sexual violence using NZCVS and other reporting data.

The researchers describe unreported offending as part of the 'dark figure of crime', meaning offending that occurs but remains officially unrecorded. The study confirms that most victims of family violence and sexual violence do not report their victimisation to Police.

Reporting decisions can be affected by factors including:

- Whether victims recognise what happened as a crime;
- Perceptions of seriousness;
- Fear of being disbelieved;
- Fear of retaliation or other consequences;
- The relationship between the victim and perpetrator;
- Repeated offending; and
- The victim's safety, recovery and sense of control over what happens following a report.

This research demonstrates why recorded criminal history provides an incomplete picture of sexual offending.

Delayed disclosure and reporting

Sexual offending may also be reported years or decades after it occurred, particularly where the offending happened during childhood.

The Ministry of Justice's 2024 factsheet 'Adults reporting sexual assaults to Police that they experienced as children' found that:

- 67% of child sexual assaults reported by adults has occurred, or begun occurring, at least 10 years earlier;
- 15% had occurred less than 10 years earlier; and
- For a further 18%, the reporting delay was unknown.

The research also found that the offending reported by adults was frequently not limited to a single incident.

This is important in the context of previous good character because an offender may maintain an apparently positive reputation for many years before the offender enters the criminal justice system. The Ministry continues to publish this research within its family violence and sexual violence evidence programme.

The absence of previous conviction at sentencing therefore cannot tell the court whether:

- There has never been previous offending;
- Offending occurred but was never disclosed;
- Offending was disclosed but never reported;
- Offending was reported but did not result in prosecution; or
- Offending occurred years earlier and has only recently been disclosed.

This does not establish that any particular first-time convicted offender has previously offended. It does, however, establish that a clean criminal record is not equivalent to evidence establishing the absence of previous sexual offending.

The attrition funnel

There is also significant attrition between sexual violence occurring and a conviction being recorded.

The pathway can be illustrated as follows:

Sexual violence occurs

↓

NZCVS captures victimisation that may never appear in Police data

↓

16% of sexual assault victims reported at least one assault to Police in 2025

↓

Police investigation

↓

For sexual assaults reported in 2023, 53% had no further action after investigation within 2 years

↓

39% reached court action within 2 years

↓

11% resulted in conviction within 2 years

↓

6% resulted in imprisonment within 2 years

The Ministry of Justice publishes specific monitoring of the progression and attrition of reported sexual assaults through the criminal justice system.

The NZCVS and Police progression data should not be treated as directly comparable datasets. They involve different populations, methods and timeframes, and the NZCVS does not capture every form of victimisation or reporting history.

The significance of the attrition data is therefore not that a fixed proportion of all sexual offending results in conviction. Rather, it demonstrates that conviction history is necessarily narrower than offending and victimisation. At several stages, offending may remain outside the official criminal record.

Sexual violence is most often committed by someone known to the victim

New Zealand evidence also demonstrates that sexual offending is frequently committed by someone known to the victim rather than by a stranger.

The Ministry of Justice's 2025 factsheet 'Sexual Assault Victims: Experiences of Women and Men' examined sexual assaults reported to Police in 2023. Among cases where the relationship between victim and perpetrator could be analysed:

- 74% of women knew the perpetrator; and
- 71% of men knew the perpetrator.

Known perpetrators can include family members, current or former partners, friends, family friends, acquaintances, flatmates, colleagues, employers, neighbours and caregivers. The Ministry lists this factsheet among its current sexual violence research resources.

This is relevant to previous good character because it challenges the assumption that a person who commits sexual offending will necessarily appear dangerous, socially isolated or obviously deviant to the people around them. The offender may instead be a partner, family member, friend, colleague, caregiver, employer, professional or other trusted person.

Child sex abuse and relationships of trust

The same pattern is particularly significant in child sexual abuse.

The Department of Corrections states that around 90% of child sexual abuse is committed by someone known to the child or family. Corrections also notes more broadly that people who commit sexual violence or sexual offences live in all communities and are of no single age, gender, ethnicity or position in society.

This directly intersects with character evidence. A person who sexually offends may simultaneously occupy or trusted roles such as:

- Partner;
- Partner;
- Relative;
- Friend;
- Colleague;
- Employer;
- Caregiver;
- Professional; and
- Community member.

The fact that other people know and regard an offender positively is therefore not inherently inconsistent with that person having committed sexual offending.

Sexual offenders are not one 'type' of person

Sexual offenders are a heterogeneous population.

The Department of Corrections expressly states that people who commit violent or sexual offences are of no single age, gender, ethnicity or position in society.

Sexual offending can involve adult or child victims, family or non-family victims, different offence types, single or repeated offending, different criminal histories and different levels of risk. A person can be a parent, partner, employee, community member, friend, respected professional or someone with no obvious reputation for violence and still commit sexual offending.

This is particularly relevant to character evidence because positive social functioning in one part of an offender's life does not necessarily establish an absence of harmful conduct in another.

What this means for previous good character

The New Zealand evidence establishes several features of sexual offending that are particularly relevant to the use of previous good character at sentencing:

1. A substantial proportion of sexual violence is not reported to Police.
2. Even where sexual violence is reported, not every single report results in prosecution or conviction.
3. Sexual offending can be disclosed many years after it occurred.
4. Sexual offending may involve repeated conduct rather than a single incident.
5. Perpetrators are commonly known to their victims.
6. Child sexual offending frequently occurs within existing relationships and networks of trust.
7. People who commit sexual offences are not one recognisable social type.

8. Public reputation and absence of previous convictions therefore cannot establish that a person has never previously been sexually offended.

The Road To Healing Aotearoa does not submit that a person with no previous convictions should be presumed to have offended before. Our position is narrower - The absence of previous convictions is not evidence capable of establishing the absence of previous sexual offending. This raises a legitimate question about the legal progression identified in *Hockley, Rana* and *Taylor*: No previous convictions > Evidence of previous good character > Potential sentencing mitigation.

In the context of sexual offending, the first proposition is an objectively ascertainable fact about recorded criminal history. The second is a broader evaluative conclusion about character. The Road To Healing Aotearoa submits that those two concepts should not be treated as equivalent.

Sexual Offending, Reoffending and Risk

Sexual offenders are not one homogeneous group

People convicted of sexual offences are not a single uniform offender group.

The Department of Corrections 'Sex Offenders Topic Series' treats sexual offenders in a heterogeneous population, with substantial differences in:

- Victim age;
- Offence type;
- Victim relationship;
- Whether offending involved single or multiple offences;
- Criminal history; and
- Level of future risk.

This means that sexual offenders do not present one uniform level of risk. Risk must be considered according to the individual offender and factors that are empirically relevant to sexual offending.

Sexual reoffending occurs, but risk differs between offenders

Research on sexual recidivism does not support the proposition that every person convicted of a sexual offence will inevitably reoffend.

A major meta-analysis by Hanson and Bussière examined 61 follow-up studies involving 23,393 sexual offenders and identified an average observed sexual recidivism rate of 13.4% across the follow-up periods studied. Research also recognised that observed recidivism figures underestimate actual sexual offending because not all offending is detected or results in conviction.

The important point for this submission is not that sexual recidivism is high or low. It is that risk differs between offenders. Where sentencing decisions involve an assessment of future risk, that assessment should therefore be based on evidence directed specifically to risk rather than assumptions based on social reputation or general character.

What predicts sexual reoffending?

Research into sexual recidivism has identified particular factors that are more strongly associated with future sexual offending.

Hanson and Morton-Bourgon examined 82 recidivism studies involving 29,450 sexual offenders. The strongest predictors identified included:

- Deviant sexual preferences; and
- Antisocial orientation.

Relevant dynamic factors included:

- Sexual preoccupation; and
- General self regulation problems.

The research also found that some matters commonly discussed in treatment or sentencing contexts, including psychological distress, denial of the sentencing offence, victim empathy and stated treatment motivation, had little or no relationship with sexual recidivism.

This reinforces an important distinction that sexual recidivism is associated with specific empirically identified factors. It is not the same thing as whether an offender is generally regarded as a good or bad person.

Previous sexual offending does matter

Some aspects of an offender's criminal and offending history are genuinely relevant to future risk.

Hanson and Bussière's meta-analysis identified prior sexual offending as one of the factors associated with social recidivism. The Road To Healing Aotearoa does not dispute that previous sexual offending can be relevant to risk assessment. The distinction is between previous sexual offending or previous sexual convictions as a risk factor and the absence of convictions being converted into a broader conclusion of general good character. Those are not the same proposition.

Official criminal histories are an imperfect record

The Department of Corrections has also recognised limitations in using official conviction histories as a complete record of sexual offending. Corrections research has cautioned that official conviction and sentencing data may be substantially less representative of actual offending because sexual offences are under-reported, under-detected and do not always result in conviction.

This connects directly with the evidence outlined in the previous section:

Sexual offending occurs > much of it is never reported > not all reported offending reaches court > not all court action results in conviction.

Accordingly, no previous convictions does not establish that no previous sexual offending has occurred.

This does not mean that a person without previous convictions should be presumed to have offended previously. It means that only recorded criminal history has evidential limits and should not be automatically treated as proof of broader moral character.

Risk assessment should be evidence based

Research also supports the use of structured and empirically derived risk assessment rather than relying primarily on unstructured impressions.

Hanson and Morton-Bourgon examined 118 prediction studies involving 45,398 sexual offenders across 16 countries and found that empirically derived actuarial measures were more accurate than unstructured professional judgment in predicting sexual, violent and general recidivism.

This distinction is relevant to character evidence. Statements such as: “he is a wonderful father” “she is respected in the community” “they have always been a good employee” may accurately describe the referee’s experience of that person.

But these statements concern social reputation and observed personal qualities. They are not the same as evidence assessing sexual recidivism risk.

New Zealand has developed a specific sexual-recidivism risk measure

New Zealand has itself developed an actuarial measure specifically for sexual recidivism. The Automated Sexual Recidivism Scale (ASRS) was developed from the Static-99 for use with male sex offenders in New Zealand. It uses specific static factors including:

- Prior sentences for sexual offences;
- Number of previous sentencing dates;
- Convictions for non-contact sexual offending;
- Current non-sexual violence;
- Previous non-sexual violence;
- Convictions involving male sexual victims; and
- Age.

Notably, the ASRS does not include factors such as:

- Community reputation;
- Whether the offender is regarded as a ‘good person’;
- Being a good employee;
- Professional standing;
- Parenting;
- Character references; or
- Being respected or liked within a community.

This does not mean that actuarial tools answer every question about an individual offender. It does demonstrate the distinction between empirically derived sexual-recidivism factors and general evidence about social reputation or previous good character.

New Zealand Validation Research

Skelton, Riley, Wales and Vess examined the development and validation of the ASRS using 1,133 male sexual offenders released from New Zealand prisons. The measure relied on historical variables associated with sexual recidivism and demonstrated statistically significant predictive accuracy across 5, 10 and 15-year follow-up periods, with ROC/AUC values of approximately 0.70 to 0.78.

Again this supports the proposition that New Zealand sexual-recidivism assessment has been developed around specific factors empirically associated with reoffending rather than general assessments of social standing or reputation.

Absence of previous sexual convictions may be associated with lower risk

It is important to acknowledge that absence of previous sexual convictions can itself be relevant to sexual recidivism risk. In *R v Peta* [2007] NZCA 28, the material considered by the Court concerning the ASRS showed lower observed sexual reoffending rates among child sexual offenders without previous sexual convictions than among those with previous sexual convictions.

These figures included:

Previous sexual convictions	5 years	10 years	15 years
None	10%	15%	19%
Previous sexual convictions	25%	32%	37%

This is an important distinction for the proposed reform. The Road To Healing Aotearoa does not argue that criminal history is irrelevant to future risk. The evidence indicates that previous sexual convictions does not establish:

- General good character;
- That the offending was an isolated lapse;
- That no previous sexual offending has occurred;
- That the offender presents no future risk; or
- That positive community reputation predicts sexual recidivism.

Risk categories are group estimates, not individual certainty

Validated risk measures must also be used with care. *Peta* discussed ASRS risk categories associated with different observed rates of sexual reoffending. These categories demonstrate that risk can vary substantially between groups, but they do not establish with certainty whether a particular individual will or will not reoffend.

This distinction is important.

If even validated empirical tools cannot predict an offender's positive reputation should not be treated as though they establish future reoffending risk.

Good character, criminal history and risk are not the same thing

For the purposes of this submission, the following concepts should remain distinct:

- No previous convictions: the offender has no recorded previous convictions.
- No previous sexual convictions: the offender has no recorded previous convictions for sexual offending.

- Previous good character: a sentencing concept that may include absence of convictions, positive community contribution, reputation and character evidence.
- Character references: evidence from other people concerning their knowledge and assessment of the offender.
- Rehabilitation: evidence concerning change, treatment and efforts to address offending behaviour.
- Sexual recidivism risk: an assessment of the likelihood of future sexual offending using relevant empirical and individual evidence.

These concepts may overlap in some circumstances, but they are not interchangeable.

What the evidence tells us

The Road To Healing Aotearoa has identified no New Zealand empirical evidence establishing general good character or community reputation as a validated protective predictor of sexual recidivism.

New Zealand sexual recidivism research identifies specific empirically derived risk factors.

The absence of previous sexual convictions may be associated with lower observed sexual recidivism than having previous sexual convictions. However, that is not equivalent to general good character, does not establish the absence of previous sexual offending, and does not by itself establish an individual offender's level of risk.

Where rehabilitation and future risk are relevant to sentencing, those matters can be considered through evidence specifically directed to:

- Rehabilitation;
- Treatment;
- Professional assessment;
- Sexual-recidivism risk;
- Accountability;
- Safety planning; and
- The individual offender's circumstances.

New Zealand case law already demonstrates this separation. In *Law v R* [2024] NZHC 1849, *Thompson v R* [2023] NZCA 3 and *R v Seddon* [2025] NZDC 11774, previous good character existed alongside separate evidence concerning rehabilitation, treatment, professional assessment, personal circumstances and risk.

The proposed reform would therefore not require the courts to ignore evidence relevant to rehabilitation or future risk. It would require those questions to be addressed through evidence directed to rehabilitation and risk themselves, rather than through general assertions that an offender is a person of good character.

What Does 'Good Character' Actually Prove

'Good Character' is not one simple concept

The Road To Healing Aotearoa's research shows that several different concepts can become grouped under the label of previous good character, including:

- No previous convictions;
- No previous sexual convictions;
- Positive community contribution;
- Employment and professional history;
- Reputation;
- Family relationships;
- Community standing;
- Character references; and
- Evidence of socially approved or meritorious conduct.

New Zealand case law itself distinguishes between an offender whose claim to good character consists mainly of having no previous convictions and an offender who can also point to sustained positive contribution to society.

In *Manawaiti v R* [2013] NZCA 88, relevant considerations included how long the offender had demonstrated good character, whether the claim rested merely on absence of convictions, whether there was evidence of positive contribution to society, and proportionality to the overall sentence. *Parkin v R* [2018] NZCA 404 provides an example of particularly substantial character evidence, involving 70 referees from different areas of the offenders personal, professional, sporting and community life.

This demonstrates that previous good character can encompass substantially more than criminal history alone.

A character reference establishes what the referee knows and believes

A character reference can provide genuine evidence about:

- How the offender treated the referee;
- Employment or professional history;
- Family relationships;
- Community involvement;
- Positive conduct personally observed by the referee; and
- The referee's own assessment of the offender.

However, the existence of a truthful character reference does not necessarily establish:

- The absence of sexual offending;
- The absence of harmful behaviour in private;
- A low risk of sexual reoffending;
- Rehabilitation;
- Remorse;
- That the referee knows the full extent of the offending; or
- That the offender is of good character in every context.

The referee may genuinely know the offender, but know only one side of them. Even accurate knowledge of an offender's positive qualities does not necessarily establish legally relevant previous good character.

R v Diamond: what does the referee actually know?

R v Diamond [2026] NZDC 4628 directly raises questions about the evidential value of character references.

The Court had before it character references and letters from people close to the offender, alongside psychological material. The judge specifically questioned how much the referees actually knew about the offending and whether their view of the offender would remain the same if their own child had been abused. No discount for previous good character was given.

A referee may therefore truthfully tell the court:

- The offender has always treated me well;
- The offender has always been a good employee;
- The offender has always been kind to my family;
- The offender contributes positively to the community.

The difficulty is not necessarily the truth of those statements. It is the inference drawn from them. Positive behaviour towards the referee does not necessarily establish how the offender behaved towards the victim, what occurred privately, whether offending occurred previously, or what risk the offender presents in the future.

R v Jaz: positive qualities can coexist with serious sexual offending

R v Jaz [2023] NZDC 18297 demonstrates particularly clearly that positive relationships and serious sexual offending can coexist.

The case involved 69 charges, 23 victims and offending spanning approximately three and a half years. Extensive character references were provided. The referees spoke highly of the offenders, knew about the offending and described them as kind hearted, decent and respectful. The judge recognised that those references demonstrated how the offenders behaved toward the people writing them, but distinguished that from how they treated their victims.

An offender can genuinely:

- Love their family;
- Treat friends well;
- Be respectful to some people;
- Be professionally successful; and
- Contribute positively to their community;

While simultaneously;

- Exploiting victims;
- Abusing trust;
- Treating victims as objects; and
- Committing serious sexual offending.

Positive qualities demonstrated in one area of an offenders life are therefore not necessarily inconsistent with serious harmful behaviour in another.

Public reputation is not the same as private conduct

The evidence discussed earlier in this submission demonstrates that people who commit sexual offences are not one identifiable social type and are frequently known to their victims. This creates an important distinction between public or social information such as:

- Reputation;
- Employment;

- Professional success;
- Community contribution;
- Friendships;
- Family relationships; and
- How other people perceive the offender,

And information directly concerning:

- Conduct towards the victim;
- Private offending;
- Repetition and duration;
- Abuse of trust;
- Offending history;
- Treatment and rehabilitation; and
- Empirically relevant risk factors.

Public reputation and private offending are capable of existing simultaneously. Evidence that an offender is respected, successful, helpful, generous or valued within one part of their life does not contradict a finding that the same person committed serious sexual offending in another part of their life.

A clean record does not establish an absence of previous sexual offending

Current New Zealand law permits the progression identified earlier in this submission:

No previous convictions > evidence of previous good character > potentially worthy of sentencing recognition.

Hockley, Rana and Taylor establish that a clean criminal record is capable of constituting evidence of previous good character.

However, the sexual violence evidence reviewed in this submission demonstrates that:

- Much sexual violence is never reported to Police;
- Not every report results in prosecution;
- Not every prosecution results in conviction;
- Childhood sexual offending may not be disclosed until many years later; and
- Official conviction histories can provide an incomplete picture of sexual offending.

A clean criminal record establishes the absence of previous recorded convictions. It does not establish the absence of previous sexual offending. Again, this does not mean that a person with no previous convictions should be presumed to have offended before. It means that the absence of a conviction should not be asked to prove more than it actually proves.

No previous convictions does not automatically equal 'good character'

Although New Zealand Appellate authority recognises a clean record as evidence capable of supporting previous good character, the case law demonstrates that it does not automatically create an entitlement to a sentencing reduction.

In *R v Newton* [2026] NZDC 2774, the defence relied on good character and lack of previous convictions. The Court nevertheless rejected the discount because the offending itself was fundamentally inconsistent with the proposition that the offender was a person of good character. *Diamond* and *Griffiths* similarly demonstrate circumstances in which good character mitigation was rejected.

Even within the current case law, courts therefore recognise that absence of convictions and the broader label of good character are not necessarily equivalent in every case.

Character evidence is not evidence of rehabilitation

Previous good character, rehabilitation and professional assessment are capable of being considered separately. Cases including *Law v R* [2024] NZHC 1849, *Thompson v R* [2023] NZCA 3 and *R v Seddon* [2025] NZDC 11774 involved separate evidence concerning rehabilitation, treatment, professional assessment and personal circumstances alongside previous good character.

The central distinction is:

- Character reference: what another person believes or has observed about the offender.
- Rehabilitation evidence: evidence directed toward whether and how the offender has addressed the offending.
- Risk evidence: Evidence directed towards factors relevant to future offending.

These concepts may overlap but they are not interchangeable.

Character evidence is not empirical risk assessment

The previous section established that sexual recidivism assessment relies on specific empirically derived factors.

Statements that an offender is:

- A good mother or father;
- A respected professional;
- A valued employer;
- A generous friend; or
- A community contributor;

Are not equivalent to an empirical assessment of sexual recidivism risk. A court hearing such evidence is hearing information about social reputation and observed personal qualities. That is different from evidence specifically directed to the likelihood of future sexual reoffending.

What good character can establish

The Road To Healing Aotearoa does not suggest that character evidence is necessarily false or meaningless. Depending on its content, it may genuinely establish that an offender:

- Has contributed positively to their community;
- Maintained employment;
- Performed valuable professional work;
- Supported family or friends;
- Participated in sporting, charitable or community organisations;
- Maintained positive relationships; or
- Was highly regarded by people who knew them.

Parkin is particularly useful in illustrating that extensive and genuine positive character evidence can exist. The question raised by this petition is what legal consequence should follow from that evidence when the court is sentencing proven sexual offending.

What good character does not necessarily establish

Even genuine evidence of positive character does not necessarily establish:

- That previous sexual offending did not occur;
- That the proven offending was an isolated incident;
- That the offender presents a low risk of sexual reoffending;
- That the offender has rehabilitated;
- That the offender accepts responsibility;
- That the offender understands the harm caused;
- That the referee knows how the offender behaved towards the victim; or
- That the referee knows the full extent of the offending.

This creates the central issue for the proposed reform. If good character evidence does not necessarily establish these matters, what sentencing purpose is served by reducing a sentence because an offender was positively regarded in other areas of their life.

The central distinction

Good character evidence can provide genuine evidence about an offender's reputation, relationships, employment, professional life, community contribution and positive conduct towards others.

These matters must, however, be distinguished from evidence concerning:

- Conduct towards the victim;
- Previous sexual offending;
- Criminal history;
- Remorse;
- Rehabilitation;
- Treatment;
- Accountability; and
- Empirically assessed sexual recidivism risk.

A character reference may accurately describe one part of an offender's life without establishing these other matters.

The central policy question therefore is not whether an offender can genuinely possess positive qualities. They can. The question is whether those positive qualities should themselves mitigate the sentence imposed for proven sexual offending.

Survivor Impact, Justice and Fairness

Survivor experience of the justice process

The impact of sentencing practices cannot be considered only in terms of the sentence imposed on the offender. For survivors of sexual violence, the justice process itself can be a source of additional distress.

The Ministry of Justice report 'Improving the justice response to victims of sexual violence: victims' experiences' examined the experiences of 39 sexual-violence victims who had engaged with the criminal justice system. The research was qualitative and was designed in part to identify aspects of the process that could contribute to revictimisation or retraumatisation.

Participants described the importance of:

- Dignity;
- Respect;
- Safety;
- Information;
- Choice;
- Meaningful participation;
- Being heard; and
- Having the harm they experienced recognised.

The research also identified fear and distrust of the justice system as factors relevant to decisions about reporting sexual violence.

The Road To Healing Aotearoa recognises the limitations of this evidence. The study was qualitative and its 39 participants were not representative of every sexual violence survivor. Its findings should therefore be understood as evidence of the experiences reported by those participants, rather than as a universal experience.

Sentencing is a significant stage for survivors

A conviction does not mark the end of a survivor's experience of the criminal justice system. The Ministry of Justice research records concerns relating specifically to sentencing, including:

- Delays and postponements;
- Anxiety and distress about attending sentencing;
- Being physically close to the offender or their supporters;
- Difficulty understanding sentencing decisions;
- Distress where the outcome appeared not to reflect the seriousness or impact of offending; and
- Victim impact statements being experienced as empowering by some participants and distressing by others.

The evaluation of New Zealand's Sexual Violence Court Pilot also recorded sentencing as a potentially stressful stage. One stakeholder described a complainant experiencing sentencing as traumatic after it was transferred to an unfamiliar court, where the physical layout meant she would have to pass the offender's supporters in order to read her victim impact statement. The evaluation itself was designed around reducing the risk of secondary victimisation within the justice process.

Sentencing can therefore affect a survivor's sense of safety, recognition, participation, understanding of the process, trust in the outcome and perception of fairness.

Survivor voice and the victim impact statement

The Ministry of Justice research found that many participants regarded the victim impact statement as an important opportunity for the effects of the offending to be heard by the judge, the offender and others present. For some participants, preparing or reading the statement was experienced as therapeutic or cathartic. Others described frustration or distress where they were unable to read their statement as expected, where parts were removed, or where they felt their experience had not been adequately conveyed or heard.

This raises an important question of balance at sentencing. The victim's account of the harm caused may be primarily presented through the victim impact statement, while extensive material may also be presented about the offender's background, circumstances and positive qualities. Where that positive character material is capable of reducing a sentence, it can have significance beyond simply providing the court with background information.

New Zealand survivors have specifically raised character references

The 2018 Ministry of Justice research is particularly relevant to this petition because participants specifically discussed character references and other offender focused pre-sentence material.

Some expressed frustration at the volume of material that could be placed before the sentencing judge about an offender, including:

- Character references;
- Medical reports; and
- Psychological assessments.

This was contrasted with the victims' primary opportunity to describe their experience through the victim impact statement. One participant described a 'real imbalance' between the material available about the offender and the material through which the victim's experience was conveyed.

This is direct New Zealand evidence that character material is not necessarily experienced by survivors as a neutral part of sentencing. It raises a particular concern where favourable character evidence does not merely help the court understand the offender, but contributes to reducing the sentence.

New Zealand evidence concerning good character reductions

The Ministry of Justice research also records a participant specifically discussing sentence reductions associated with the offender being regarded as:

- A good mother or father;
- A good member of the community; and
- A person of good character.

The participant struggled to understand why those positive aspects of the offender's life should contribute to reducing the sentence.

This is directly relevant to the question raised throughout this submission: Why should positive conduct towards other people reduce the sentence imposed for harm caused to the victim? The issue identified by The Road To Healing Aotearoa is therefore not confined to a theoretical concern about sentencing doctrine. New Zealand survivor research has already recorded the experience of seeing favourable aspects of an offender's family and community life translated into sentencing mitigation.

The Road To Healing Aotearoa survivor and whānau consultation

As part of this work, The Road To Healing Aotearoa sought direct feedback from survivors, whānau, supported and professionals connected to sexual violence and the justice process. This consultation was voluntary and self-selected. It is not a representative survey of sexual-violence survivors in Aotearoa and should not be treated as one. Its value is qualitative: it provides direct accounts of how respondents experienced or understood the use of previous good character..

Respondents repeatedly described themes of:

- Feeling invalidated or diminished;
- Feeling that the offenders reputation was being weighed against the harm they experienced;
- Anger and confusion about sentence reductions;
- Feeling unheard or disbelieved;
- Reduced trust in the justice system;
- Concern that the positive descriptions of the offender conflicted with their own experience of that person;
- Distress at hearing offenders described as good, kind or respected; and
- Concern about the effect of the process on reporting and participation.

Several respondents described having personally witnessed or experienced previous good character being relied upon in sexual-offence cases. Their accounts included perceptions that sentence reductions had undermined their sense of justice, increased distress and left them questioning whether reporting had been worthwhile. One recurring theme was the conflict between the offender presented in a character reference and the offender experienced by the survivor. Respondents described feeling that an offender's reputation, employment, relationships or community standing could be placed in tension with the survivor's account of what had occurred.

Almost all respondents to the relevant consultation question said they believed consideration of previous good character could affect a survivor's perception of justice or trust in the system. The Road To Healing Aotearoa does not suggest that these responses establish how every survivor would experience character evidence. They do, however, demonstrate that among those who chose to participate, the issue was experienced as significant rather than merely technical.

Recognition, dignity and procedural fairness

New Zealand research consistently identifies the importance of survivors being treated with dignity, respect, compassion, privacy, safety and access to information and choice.

Where participants felt informed, supported and respected, the justice process was generally experienced more positively. Where survivors felt excluded, unsafe, unheard or inadequately informed, the process could itself become another source of distress. Procedural fairness is therefore not limited to whether the correct legal steps were followed. From the survivors perspective, it may also involve whether:

- Their harm was recognised;
- Their voice was heard;
- They understood the process;
- They were treated respectfully; and
- The sentencing process appeared to give appropriate weight to the offending and its impact.

This provides important context for understanding why previous good character mitigation may affect perceptions of sentencing fairness.

Comparable evidence from Australia

Concerns about character evidence are not unique to The Road To Healing Aotearoa's consultation.

The NSW Sentencing Council conducted a specific review of good character at sentencing, with its final report transmitted in July 2025 and released in February 2026. The review considered the operation of

good character evidence and received submissions and consultation material addressing the experience of victim survivors. The council heard concerns that favourable character evidence could conflict sharply with a survivor's experience of the offender, shift attention away from the harm caused, create a perception that previous good deeds offset offending, and contribute to distress or reduced trust in the justice system.

The Queensland Sentencing Advisory Council also recorded concerns from victim-survivors and advocacy stakeholders about the use of character references in sexual-offence sentencing. Its work reported concerns about offenders being presented as 'good people', 'good parents' or valued community members, and about offending being framed as out of character or as a temporary lapse. The Council recorded stakeholder views that such material could be deeply distressing or retraumatising.

These Australian findings should not be treated as evidence of the experience of all New Zealand survivors. They are, however, relevant comparable evidence showing that similar concerns have arisen independently in other sentencing reviews.

What the evidence establishes

Taken together, the evidence supports a narrower and more defensible conclusion than saying character evidence necessarily harms every survivor. New Zealand research establishes that sexual violence survivors can experience secondary victimisation through the criminal justice process, and that dignity, safety, respect, voice and recognition of harm can materially shape their experience of justice.

Importantly for this petition, New Zealand Ministry of Justice research has specifically recorded:

- Survivor concern about character references;
- A perceived imbalance between extensive offender-focused pre-sentence material and the victim impact statement; and
- Direct survivor concern about sentencing reductions associated with an offender being regarded as a good parent, community member or person of good character.

The Road To Healing Aotearoa's own consultations identify similar themes of invalidation, diminished trust, distress and concern about the effect of favourable offender narratives. The evidence does not establish that every survivor will experience previous good character evidence in the same way, or that removing it would necessarily increase reporting rates. It does establish that previous good character mitigation is not experienced as a neutral sentencing factor by all survivors, whānau and professionals. For some, it directly affects perceptions of recognition, validation, fairness and trust in the justice process. The impact is relevant when considering whether previous good character should continue to have independent mitigating value in sexual-offence sentencing.

#YourReferenceAintRelevant and Comparable Reform in Australia

The origins of #YourReferenceAintRelevant

The Road To Healing Aotearoa's #YourReferenceAintRelevant campaign was inspired by the Australian #YourReferenceAintRelevant campaign co-founded by survivor advocates Harrison James and Jarad Grice. The Australian campaign was established to challenge the use of good character references in

sentencing for child sexual offending and developed from survivor-led advocacy into sustained engagement with governments, parliamentary processes and sentencing law reform.

The Road To Healing Aotearoa adopted #YourReferenceAintRelevant in Aotearoa New Zealand with the support and encouragement of the Australian campaign. Harrison James and Jarad Grice have supported The Road To Healing Aotearoa's work, shared knowledge and reform material, and provided an existing survivor-led foundation from which the Aotearoa campaign developed.

The Road To Healing Aotearoa acknowledges Harrison James, Jarad Grice and the Australian #YourReferenceAintRelevant campaign as the originators of the campaign that inspired our work in Aotearoa.

From survivor advocacy to legislative reform

The significance of the Australian campaign extends beyond public awareness.

In New South Wales, advocacy concerning good character at sentencing was followed by a formal review by the NSW Sentencing Council. The Council transmitted its final report in July 2025 and it was publicly released in February 2026. The NSW government subsequently introduced legislation to abolish good character as a mitigating factor. Its public announcement acknowledges advocacy by #YourReferenceAintRelevant co-founders Harrison James and Jarad Grice.

The reform ultimately proceeded through two stages in 2026. An initial Act removed good character as a mitigating factor for sexual offences. A subsequent Act extended the abolition to all offences. The later legislation passed in both houses in June 2026 and received royal assent on 10 June 2026. This progression demonstrates how survivor-led advocacy can contribute to formal sentencing review and legislative consideration.

Why Australian reforms are relevant

Australian jurisdictions are useful comparators because they demonstrate that previous good character is not an unavoidable or indivisible part of sentencing law. Different jurisdictions have adopted different approaches, including:

- Excluding good character where it assisted the commission of sexual offending;
- Restricting the purposes for which good character can mitigate a sentence;
- Separating good character from a lack of previous convictions;
- Preserving rehabilitation and reoffending risk independently; and
- Completely removing good character as a mitigating factor.

The Australian experience therefore provides several legislative models relevant to the reform sought in this submission.

The earlier 'facilitated the offending' model

Some Australian jurisdictions adopted a narrower approach in which good character is excluded only where it assisted the offender in committing the sexual offence.

The Australian Royal Commission into Institutional Responses to Child Sexual Abuse recommended that states and territories legislate to prevent good character from mitigating sentence where that good

character had facilitated had facilitated child sexual abuse. This model remains relevant because it demonstrates that legislatures have already recognised circumstances in which good character should not reduce a sentence.

However, it is narrower than reform sought by The Road To Healing Aotearoa.

Tasmania's existing approach

Section 11A of Tasmania's Sentencing Act 1997 provides that, when sentencing an offender for a sexual offence, the court must not take into account the offender's good character or lack of previous convictions where the court is satisfied that those matters assisted the offender in the commission of the offence.

The Tasmanian model therefore follows the earlier 'facilitated the offending' approach. It demonstrates that legislation can expressly prevent good character from mitigating sentences in sexual-offence cases. However, good character remains potentially available where the required connection with the offending cannot be established.

That is narrower than the reform sought by The Road To Healing Aotearoa.

South australia

South Australia has similarly operated a legislative model restricting use of good character and lack of previous convictions in specified child sexual offence sentencing where those factors assisted in the commission of the offence.

Again, the significance for this submission is that the use of good character has already been treated as a matter suitable for specific legislative restriction rather than being left entirely to ordinary sentencing discretion.

Queensland: Limiting what good character can be used for

Queensland adopted a different model in 2025.

Under amendments to the Penalties and Sentences Act 1992, where an offender is being sentenced for an offence of a sexual nature and their good character is based on a character reference, community standing or contributions to the community, that good character may be treated as mitigating only where it is relevant to:

- Prospects of rehabilitation; or
- Risk of reoffending.

The Court may also decline to treat it as a mitigating having regard to the nature and seriousness of the offence, including harm to the victim and the victims' vulnerability.

This is significant because Queensland directly addresses one of the central questions identified earlier in the submission - what sentencing purpose is good character evidence actually serving? Queensland does not treat reputation, community standing or contribution as automatically deserving independent mitigation. It ties their relevance to rehabilitation and risk.

The approach is narrower than the complete removal sought by The Road To Healing Aotearoa, but it reinforces the distinction between general social reputation and evidence relevant to rehabilitation or offending risk.

New South Wales: complete removal

New South Wales has moved further.

Following the NSW Sentencing Council review and legislative reform in 2026, good character is no longer available as a mitigating factor in sentencing. Importantly, the NSW Government expressly distinguished good character from other matters that remain capable of consideration; including:

- Lack of previous convictions;
- Prospects of rehabilitation;
- Likelihood of reoffending.

The later 2026 legislation extended the abolition of good character to all offences. It passed parliament on 4 June 2026 and received Royal assent on 10 June 2026.

This distinction is directly relevant to the reform proposed by The Road To Healing Aotearoa: Good character is not the same as lack of previous convictions, rehabilitation and risk.

The NSW model demonstrates that legislation can remove good character as an independent mitigating factor while preserving other sentencing considerations.

Tasmania's 2026 Bill

Tasmania is also considering a broader reform beyond its existing 'facilitated the offending' rule. The Sentencing Amendment (Good Character) Bill 2026 was introduced in August 2026. It passed its third reading in the House of Assembly on 3 September 2026 and proceeded to the Legislative Council.

As at the latest Tasmanian parliamentary record available, the Bill had not yet received Royal assent and should therefore still be described as proposed legislation rather than enacted law. The Bill represents a move towards broader exclusion of good character evidence in serious offending, including sexual offending.

Defining good character and preventing relabelling

The Australian reform process also highlights an important drafting issue for New Zealand. Previous good character is not a single, precisely defined concept. It can encompass matters such as:

- Reputation;
- Community standing;
- Meritorious conduct;
- Perceived moral qualities;
- Professional distinction; and
- Civic or community contribution.

This matters because reform could be undermined if the phrase 'good character' were removed while substantially the same material continued to attract mitigation under another description.

The Road To Healing Aotearoa therefore considers that any New Zealand reform should be drafted broadly enough to prevent excluded good character evidence from simply being relabelled as reputation, standing, professional distinction, community contribution, meritorious conduct or moral character. At the same time legislation should preserve evidence independently relevant to matters such as rehabilitation, risk, treatment and personal circumstances.

Three broad legislative approaches

The Australian experience now demonstrates several distinct models:

1. Facilitation model - Good character is excluded where it assists the commission of sexual offending.
2. Purpose-limited model - Good character may mitigate only where it is relevant to rehabilitation or reoffending risk.
3. Removal model - Good character is removed as an independent mitigating factor, while other sentencing considerations remain separately available.
4. Broad proposed exclusion - Tasmania's 2026 Bill represents a further move towards broader statutory exclusion in serious offending.

The Road To Healing Aotearoa's proposal is closest to the third approach. We do not consider that exclusion should depend upon proving that the offender's reputation or standing actually facilitated the offending. Our concern is broader: Whether favourable reputation, community standing, professional distinction or other forms of previous good character should themselves reduce the sentence for proven sexual offending.

Good character can be separated from rehabilitation and risk

One of the most important lessons from the Australian reforms is that good character does not have to be treated as inseparable from rehabilitation, future risk or criminal history.

Queensland has limited good character mitigation to circumstances in which it relates to rehabilitation or reoffending risk.

New South Wales has gone further by removing good character as a mitigating factor while expressly preserving matters such as rehabilitation, likelihood of reoffending and lack of previous convictions.

This mirrors the distinction already identified in New Zealand case law. Cases such as *Law v R*, *R v Seddon*, and *Thompson v R* demonstrate that previous good character can be considered separately from professional assessment, treatment, rehabilitation, remorse, personal background and risk.

What the Australian comparison tells us

The Australian experience demonstrates:

- Previous good character has already been legislatively restricted in sexual offence sentencing;
- Legislatures have adopted offence-specific rules where concerns arise about its relevance;
- Earlier reforms focused on whether good character facilitated the offending;
- Queensland now limits certain forms of good character to rehabilitation or reoffending risk purposes;
- New South Wales has removed good character as an independent mitigating factor while preserving other sentencing considerations separately; and

- Tasmania is considering broader exclusion through its 2026 Bill.

The broader comparative lesson is that previous good character is not an indivisible component of individualised sentencing.

Legislation can distinguish between who the offender was thought to be and evidence actually relevant to rehabilitation, criminal history, treatment, accountability and future risk. That distinction lies at the centre of the reform sought by The Road To Healing Aotearoa.

Counterarguments and Responses

The Road To Healing Aotearoa recognises that there are principled arguments for retaining previous good character as a mitigating consideration. Those arguments largely concern judicial discretion, individualised sentencing, rehabilitation, recognition of first offenders and fairness to the offender.

The purpose of this section is not to dismiss those concerns, but to address whether they require previous good character to remain an independent mitigating factor in sexual-offence sentencing.

Judges already have discretion to refuse or reduce good character mitigation

New Zealand courts already have significant discretion over the weight given to previous good character. Case law demonstrates that judges may:

- Limit a discount;
- Reduce its weight because of prolonged or repeated offending;
- Offset it against other features of the case; or
- Refuse it entirely where the offending is inconsistent with a claim of good character.

Cases including *Taylor*, *Britow*, *King*, *Newton*, *Diamond* and *Griffiths* demonstrate that good character mitigation is not automatic.

However, the existence of discretion does not resolve the policy question raised by this petition.

The cases reviewed in this submission show significant variation. Previous good character has been accepted at substantial levels in some cases, given modest recognition in others, incorporated without a discrete percentage, and rejected entirely in others.

The question is not whether judges are capable of refusing good character mitigation. They plainly are. The question is whether sexual-offence sentencing should continue to require case-by-case decisions about the mitigating value of an offender's positive reputation at all.

Removing good character would prevent courts from considering the whole person

A central argument for retaining good character is that sentencing should remain individualised. Courts should be able to understand the offender as a whole person rather than looking only at the offence.

The Road To Healing Aotearoa agrees that sentencing should remain individualised. However, our case law research does not support the proposition that removing previous good character would prevent the courts from considering the offender's wider circumstances.

New Zealand sentencing already distinguishes between:

- Previous good character;
- Remorse;
- Rehabilitation;
- Treatment;
- Psychological or psychiatric evidence;
- Cultural reports;
- Personal history;
- Family and whānau circumstances;
- Risk assessment;
- Youth; and
- Neurological or mental health factors.

In *Law*, previous good character was treated separately from remorse, rehabilitation, forensic psychiatric assessment, WellStop involvement and the offender's own history of abuse.

In *Seddon*, previous good character was separate from SAFE participation, safety planning, professional assessment and rehabilitation.

In *Thompson*, character references existed alongside a PAC report, cultural report, victim impact evidence and other personal circumstances.

Removing previous good character as a mitigating factor does not prevent the court from considering the whole person. It removes one particular proposition: that an offender's favourable reputation or history of socially approved conduct should itself reduce the sentence. The removal of previous good character does not prevent the court from seeing the whole person. It prevents the court from mistaking the person's public reputation for the whole person.

Good character may indicate rehabilitation

The Court of Appeal has recognised rehabilitation as one rationale underlying previous good character.

Manawaiti identifies the 'fall from grace' rationale alongside the possibility of greater rehabilitation and reduced likelihood of future offending. *Taylor* also recognises the rehabilitation rationale.

This is one of the stronger arguments for retaining the factor. However, rehabilitation and risk are not the same thing as reputation. The sexual recidivism research reviewed earlier in this submission focuses on factors such as:

- Prior sexual offending;
- Criminal history;
- Age;
- Violence;
- Victim characteristics;
- Sexual interests;
- Antisocial orientation; and

- Dynamic risk factors.

It does not treat being respected, being a good parent, professional success, supportive friendships, community contribution or positive character references as substitutes for structured assessment of rehabilitation or risk.

If rehabilitation is relevant, it can be assessed through evidence of rehabilitation. If future risk is relevant, it can be assessed through evidence directed to risk. General reputation should not be required to operate as a proxy for either.

First offenders should receive recognition

New Zealand authority establishes that an absence of previous convictions can constitute evidence of previous good character.

It may therefore be argued that an offender with no prior convictions should receive some recognition for coming before the court without a criminal record.

The Road To Healing Aotearoa does not argue that criminal history must become irrelevant. Our position is that lack of previous convictions and previous good character should not automatically be treated as the same concept.

A lack of convictions is a fact about an offender's recorded criminal history. Previous good character is a broader evaluative concept that may include:

- Reputation;
- Community standing;
- Employment;
- Positive contribution; and
- Perceived moral qualities.

The absence of previous convictions may remain relevant to criminal history or evidence based risk assessment without requiring a broader conclusion that the offender is therefore a person of previous good character.

Complete removal is too blunt

An alternative to complete removal would be to restrict good character rather than abolish it. Possible approaches include:

- Allowing it only where connected to rehabilitation;
- Allowing it only where relevant to reduced reoffending risk;
- Excluding it only where good character facilitated the offending; or
- Providing further statutory guidance while retaining judicial discretion.

Australian jurisdictions demonstrate that these middle ground approaches are possible.

The Road To Healing nevertheless considers complete removal the clearer approach. A conditional model continues to require courts to determine:

- Whether good character actually assisted in the offending;
- Whether reputation is genuinely relevant to rehabilitation;
- How strong any connection with risk is;
- How much weight should be given;

- Whether prolonged offending negates it; and
- Whether the evidence amounts to no previous convictions or something more.

New Zealand case law already demonstrates how fact-sensitive and variable these questions can become.

A complete exclusion produces a clearer rule - Good character itself does not mitigate sexual offending, while genuinely relevant to evidence of rehabilitation, risk and personal circumstances remain available through the appropriate sentencing categories.

What if the offender genuinely has positive qualities

The 'fall from grace' rationale recognises that conviction and punishment may have particular consequences for someone who previously lived a law-abiding or socially positive life.

The Road To Healing Aotearoa does not dispute that offenders may possess genuine positive qualities. An offender may be:

- A loving parent;
- A reliable employee;
- A supportive friend;
- A respected professional; or
- A valued community member.

The proposed reform does not require the court to pretend otherwise. The policy question is different - Should those positive qualities themselves reduce the sentence imposed for proven sexual offending? Positive qualities in one part of a person's life are not necessarily inconsistent with serious harmful conduct in another.

Character references provide useful context

Character references can provide useful factual information about employment, relationships, community contribution, support networks and stability.

The Road To Healing Aotearoa does not suggest that such information is necessarily irrelevant. The distinction is between fact being presented and the sentencing purpose for which it is used.

For example:

- Employment may be relevant to reintegration;
- Family support may be relevant to rehabilitation;
- Treatment engagement may be relevant to rehabilitation; and
- Stable accommodation may be relevant to release or reintegration planning.

Those propositions are different from saying "the offender is a good person and should therefore receive a lower sentence. A prohibition on good character mitigation should not prevent genuinely relevant contextual information from being considered for another lawful sentencing purpose.

Judicial discretion is preferable to legislative rules

Another argument is that sentencing legislation cannot anticipate every factual circumstance and that judges are better positioned to determine how much weight particular factors should receive.

Judges have access to:

- The facts of the offending;
- Legal submissions;
- Victim impact material;
- Pre-sentence reports;
- Professional assessments; and
- Case law.

The Road To Healing Aotearoa does not question judicial competence. This is instead a question about the statutory boundaries of discretion. Parliament already determines sentencing purposes, aggravating and mitigating factors, matters courts must take into account, matters courts must not take into account, and offence-specific sentencing rules.

Legislative reform would not remove judicial discretion generally. It would define the relevance of one particular mitigating factor in one category of offending. Judges would continue to exercise discretion over the remaining purposes, principles, aggravating and mitigating factors, rehabilitation, risk and personal circumstances.

Removing mitigation may be unfair to the offender

Sentencing must remain fair and proportionate to the offender. A complete prohibition could therefore be criticised as preventing recognition of genuine mitigation or producing unnecessarily harsh outcomes.

The proposed reform does not remove mitigation generally. It asks that genuinely mitigating circumstances be recognised under the category to which they actually relate:

- Rehabilitation through rehabilitation evidence;
- Remorse through evidence of remorse;
- Youth as youth;
- Personal trauma through relevant personal circumstances;
- Mental health or neurological factors through appropriate evidence;
- Guilty plea through the applicable plea reduction;
- Cultural background through the relevant statutory process; and
- Risk through professional or structured risk evidence.

Removing one mitigating factor does not remove proportionality or individualised sentencing. There is no requirement that favourable reputation must itself attract mitigation in order for sentencing to remain fair.

Good character may indicate lower reoffending risk

It may be argued that an offender with no previous convictions, stable employment, family support and community ties could present a lower risk of future offending. Some of those underlying facts may indeed be relevant to risk.

The Road To Healing Aotearoa's position is that where criminal history or protective factors are genuinely relevant to risk, they should be considered as risk factors. The existence of validated risk-related information does not require the broader legal concept of previous good character to remain an independent mitigating factor.

Recent sentencing reforms already limit excessive discounts

It may also be argued that recent changes to New Zealand sentencing law already addresses concerns about excessive cumulative sentencing reductions.

That addresses a different question. A cap or restriction on total mitigation asks 'how much mitigation can reduce a sentence overall', this petition asks 'Should previous good character be a mitigating factor in sexual-offence sentencing at all?'

A general limit on the size of a discount does not resolve whether one particular basis for mitigation remains appropriate.

Good character already carries less weight in serious or prolonged offending

Cases such as *Britow* and *Taylor* demonstrate that duration, repetition and seriousness can undermine good character mitigation.

It may therefore be argued that the existing law already corrects itself in cases where the concern is greatest. However, that still leaves good character available in other sexual offence cases. The relevance question does not disappear because:

- The offending was shorter in duration;
- There was one victim;
- The offending involved fewer incidents; or
- It was the offender's first detected offence.

If reputation is not itself a reliable measure of culpability, rehabilitation or sexual-recidivism risk, its independent sentencing relevance still requires justification.

Why treat sexual offending differently?

A further question is why good character should be removed specifically for sexual offending rather than for other serious offending.

The Road To Healing Aotearoa's proposal rests on features identified earlier in this submission, including:

- Substantial under-reporting;
- Delayed disclosure;
- High levels of offending by people known to the victim;
- Offending within trusted relationships;
- The gap between recorded criminal history and actual sexual offending; and
- The ability of respected or ordinary social presentation to coexist with serious sexual harm.

The proposal does not depend on saying that sexual offending is the only context in which good character raises concerns. It submits that there is a specific evidential and policy basis for Parliament to consider treating sexual offending differently for this purpose.

Could reform accidentally exclude cultural or whānau evidence?

This is an important drafting concern. A poorly drafted prohibition could unintentionally exclude evidence concerning:

- Whānau;

- Whakapapa;
- Cultural background;
- Social circumstances;
- Supports networks; or
- Personal history.

The Road To Healing Aotearoa does not seek that outcome.

The reform should distinguish between evidence offered to establish general good character and evidence independently relevant to another recognised sentencing consideration. It should therefore preserve:

- Section 27 material;
- Cultural reports;
- Personal and whānau background;
- Rehabilitation support;
- Treatment engagement;
- Accommodation and community support; and
- Other legally relevant evidence.

A prohibition on good character mitigation should not prevent a court from considering the same underlying fact where that fact is independently relevant for another lawful sentencing purpose.

Could complete removal create appeal or proportionality issues

Any statutory prohibition may create interpretive questions concerning scope, admissibility, overlap with other factors and proportionality.

That does not mean reform is unworkable. It means drafting must be clear. Legislation would need to address:

- What constitutes previous good character;
- Whether lack of previous convictions remains separate;
- Mixed-purpose evidence;
- Reputation and community standing;
- Application across sexual offences;
- Transitional arrangements; and
- Interaction with existing sentencing provisions.

These drafting questions are addressed further in the proposed reform section.

Overall response to counterarguments

The strongest arguments for retaining previous good character are that it:

- Supports individualised sentencing;
- Assists assessment of rehabilitation and risk;
- Recognises first offenders; and
- Allows judges to respond flexibly to individual circumstances.

The Road To Healing Aotearoa does not submit that those sentencing functions should disappear. New Zealand law already provides separate mechanisms for considering:

- Rehabilitation;
- Remorse;

- Criminal history;
- Personal circumstances;
- Cultural and whānau background;
- Treatment;
- Professional assessment;
- Future risk; and
- Other mitigating factors.

The central issue is therefore narrower - Does an offender's favourable reputation, community standing, socially approved conduct or positive treatment of other people add sufficient independent sentencing value to justify reducing the sentence for proven sexual offending?

Proposed Legislative Reform

What The Road To Healing Aotearoa is seeking

The Road To Healing Aotearoa proposes that the Sentencing Act 2002 be amended so that previous good character cannot operate as a mitigating factor when sentencing sexual offending.

The reform should apply across the relevant sexual-offence framework and should not be limited to:

- Child victims;
- Penetrative offending;
- Physical-contact offending; or
- Offending involving abuse of a formal position of trust.

The removal of the reform is to remove the independent mitigating value of:

- Reputation;
- Community standing;
- Professional standing;
- Social status;
- Meritorious conduct;
- Civic or community contribution;
- Positive character references;
- Perceived moral qualities; and
- Other evidence offered solely or substantially to establish that the offender is otherwise a person of good character.

An offender's positive reputation or history of socially approved conduct should not itself reduce the sentence imposed for proven sexual offending.

The statutory change required

Section 9 (2) (g) of the Sentencing Act 2002 presently recognises 'any evidence of the offender's previous good character' as a mitigating factor.

As demonstrated throughout this submission, New Zealand case law has treated that provision as capable of encompassing matters including:

- A clean criminal record;

- Positive character references;
- Community contribution;
- Employment;
- Professional standing; and
- Family and social standing.

The reform therefore needs to address the legal availability of the factor itself, rather than merely discouraging large discounts.

The Road To Healing Aotearoa's preferred approach is an offence-specific exclusion within the Sentencing Act. Section 9 (2) (g) could remain available generally, while sexual offending would be subject to an express statutory exception.

A possible legislative concept would be: In sentencing or otherwise dealing with an offender for a sexual offence, the court must not take into account as a mitigating factor of the offender's previous good character or evidence adduced solely or substantially for the purpose of establishing the offender's previous good character.

This wording is intended as a policy concept rather than final statutory drafting. The precise provision should ultimately be settled through the legislative drafting process.

What the reform should expressly preserve

The removal of previous good character should not prevent courts from considering evidence independently relevant to:

- Rehabilitation;
- Treatment;
- Remorse;
- Professional risk assessment;
- Psychological or psychiatric assessment;
- Youth;
- Mental health or neurological factors;
- Personal history;
- Cultural background;
- Whānau circumstances;
- Support available to the offender;
- Accommodation;
- Reintegration;
- Guilty plea;
- Assistance to authorities; and
- Any other legally recognised mitigating consideration.

New Zealand case law already demonstrates that these matters are capable of being separated from previous good character.

In *Law*, good character was considered separately from rehabilitation, remorse, psychiatric assessment and personal history.

In *Seddon*, good character was distinct from treatment, professional assessment and rehabilitation.

In *Thompson*, character references existed alongside PAC reports, cultural material and other offender specific information.

Removing previous good character therefore does not require the removal of individualised sentencing.

Mixed-purpose evidence

A fact may sometimes be relevant to both good character and to another legitimate sentencing consideration.

For example; Stable employment could be relied upon to argue that an offender is respectable and of good character. However, the same employment may also be relevant to reintegration or future stability. Likewise, family support should not mitigate sentence merely because relatives consider the offender to be a good person, but genuine support structures may remain relevant to rehabilitation or reintegration.

The reform should therefore focus on the purpose for which evidence is relied upon, rather than excluding every underlying fact that could appear within a character reference. The relevant fact may remain available where it has an independent lawful sentencing purpose while being unavailable as a basis for general good character mitigation.

Preventing relabelling or circumvention

The reform should not be capable of avoidance merely by replacing the words 'good character' with another description.

The exclusion should therefore extend to evidence relied upon solely or substantially to establish matters such as:

- Reputation;
- Community standing;
- Professional prestige;
- Civic contribution;
- Social status;
- Meritorious conduct;
- General moral character;
- Perceived respectability; or
- General assertions that the offender is a 'good person'.

The purpose of reform would be undermined if material excluded as previous good character could simply be reintroduced as reputation, professional standing, community contribution or moral worth.

Lack of previous convictions

The Road To Healing Aotearoa distinguishes between the factual position that an offender has no previous convictions and the evaluative conclusion that an offender is therefore of previous good character.

Our proposal is that previous good character be excluded while criminal history remains capable of consideration where genuinely relevant.

A court could therefore continue to recognise that an offender has no previous convictions. It could not convert that fact into a broader proposition that the offender is therefore a person of good character deserving a sentence reduction.

The reform should apply to all sexual offences

The exclusion should apply to all sexual offending falling within the statutory scope adopted for the reform. It should not depend on:

- The age of the victim;
- Whether physical contact occurred;
- Whether penetration occurred;
- Whether there was one or multiple victims;
- Whether offending occurred once or repeatedly; or
- Whether the offender held a formal position of authority.

The evidential issues identified throughout this submission, including under-reporting, delayed disclosure, known perpetrators, trusted relationships and positive public reputation, are not confined to one narrow category of sexual offending.

The intended scope should include relevant Crimes Act 1961 offences such as:

- Section 128B, sexual violation;
- Section 129, attempted sexual violation and assault with intent to commit sexual violation;
- Section 129A, sexual conduct with consent induced by certain threats;
- Section 130, incest;
- Section 131, sexual conduct with a dependent family member;
- Section 131AB, grooming for sexual conduct with a young person;
- Section 131B, meeting a young person following sexual grooming;
- Section 132, sexual conduct with a child under 12;
- Section 134, sexual conduct with a young person under 16;
- Section 135, indecent assault; and
- Section 138, sexual exploitation of a person with significant impairment.

The statutory scope should also account for relevant offences involving the sexual exploitation of people under 18 and objectionable publication offending involving the sexual exploitation or sexual depiction of children and young people. The intention is that reform cover appropriate:

- Contact offending;
- Non-contact offending;
- Grooming;
- Digitally facilitated offending; and
- Child sexual exploitation material offending.

The final statutory schedule should be settled through legislative drafting so that all intended offences are captured without unintentionally including unrelated offences merely because they appear within the same Part of an Act.

Professional assessment should remain available

Where the court requires information concerning:

- Rehabilitation;
- Treatment progress;
- Reoffending risk;
- Offending-related needs; or
- Psychological functioning;

It should continue to be able to rely on appropriate professional evidence. The reform should not prevent the use of:

- Pre-sentence reports;
- Psychological or psychiatric assessments;
- Treatment provider reports;
- Structured risk assessments; or
- Rehabilitation reports.

If the sentencing issue is rehabilitation risk, the evidence should be directed toward rehabilitation or risk itself.

Relationship with the 40% mitigation cap

The current Sentencing Act includes the s 9Q limitation on reductions under applicable personal mitigating factors.

If previous good character were excluded in sexual-offence sentencing, it would simply cease to contribute to that mitigation calculation in those cases. Other applicable mitigating factors would continue to operate under their existing statutory rules. The proposed reform can therefore operate within the existing sentencing architecture without requiring the broader mitigation framework to be rebuilt.

The proposed reform

The Road To Healing Aotearoa proposes an offence specific amendment to the Sentencing Act 2002 providing that previous good character must not operate as a mitigating factor when sentencing sexual offending.

The exclusion should be drafted broadly enough to prevent substantially the same material being reintroduced as:

- Reputation;
- Community standing;
- Professional distinction;
- Civic contribution;
- Meritorious conduct; or
- Perceived moral character.

At the same time, legislation should preserve evidence independently relevant to:

- Rehabilitation;
- Risk;
- Treatment;
- Remorse;
- Personal circumstances;
- Cultural and whānau background; and
- Other recognised sentencing considerations.

The purpose of the reform is therefore not to remove individualised sentencing. It is to remove the independent mitigating value of previous good character in sexual-offence sentencing.

Conclusion

The Road To Healing Aotearoa asks Parliament to reconsider the place of previous good character in the sentencing of sexual offending.

This submission does not suggest that an offender cannot possess genuine positive qualities, have meaningful relationships, contribute to their community, maintain employment or be respected by others. They can. Nor does the proposed reform seek to prevent courts from considering genuine rehabilitation, remorse, treatment, professional assessment, personal circumstances, cultural and whānau background, criminal history or evidence relevant to future risk.

The issue is narrower: whether an offender's favourable reputation, community standing, professional status, socially approved conduct or positive treatment of other people should itself reduce the sentence imposed for proven sexual offending.

The research considered in this submission demonstrates that previous good character is a broad and evaluative concept. Under current New Zealand law, a clean criminal record can constitute evidence of previous good character, while character references, employment, community contribution and professional reputation may also contribute to the assessment. Courts retain considerable discretion over the weight ultimately given to that evidence, producing different outcomes depending on the circumstances of each case.

Sexual offending creates particular difficulties in this context. Much sexual violence is never reported to Police, disclosure can occur years or decades after the offending, perpetrators are frequently known to their victims, and serious sexual offending can coexist with an otherwise positive public reputation. A clean criminal record establishes the absence of previous recorded convictions. It does not establish the absence of previous sexual offending, and it should not automatically establish broader moral character.

The evidence concerning sexual recidivism also demonstrates the importance of distinguishing good character from rehabilitation and risk. Where rehabilitation or future risk is relevant, courts can consider evidence directed specifically to those matters. General reputation and community approval are not substitutes for professional assessment or empirically relevant risk information.

Survivor evidence adds another important dimension. New Zealand research has recorded concern about character references, the balance of offender-focused material at sentencing and reductions associated with an offender being regarded as a good parent, community member or person of good character. The Road To Healing Aotearoa's own consultation similarly identified concerns about validation, recognition of harm, fairness and trust in the justice process.

Comparable Australian reforms demonstrate that good character can be restricted or removed without eliminating individualised sentencing. Legislatures have distinguished good character from criminal history, rehabilitation and reoffending risk, and have adopted different statutory approaches to limiting its mitigating effect.

The Road To Healing Aotearoa therefore proposes an offence-specific amendment to the Sentencing Act 2002 so that previous good character no longer operates as an independent mitigating factor when sentencing sexual offending.

The reform should be drafted broadly enough to prevent substantially the same concept being reintroduced through labels such as reputation, community standing, professional distinction, civic contribution, meritorious conduct or perceived moral character. At the same time, it should preserve evidence independently relevant to rehabilitation, treatment, remorse, risk, personal circumstances, cultural and whānau background and other legitimate sentencing considerations.

This reform does not require courts to disregard the offender as a person. It asks that positive qualities demonstrated elsewhere in an offender's life do not themselves diminish the sentencing consequence of the sexual offending proved before the court.

A person's reputation, professional standing, community status or history of socially approved conduct should not diminish the seriousness of sexual offending or the harm caused to another person.

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