Queensland Law Society

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Office of the President

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Our ref: LP

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [redacted]

Dear Committee Secretary,

Penalties and Sentences (Sexual offences) and Other Legislation Amendment Bill 2025

Thank you for the opportunity to provide feedback on the Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025 (**Bill**) and thanks the committee for the extra time to provide our submission.

As you are aware, Queensland Law Society (**the Society**) is the peak professional, apolitical body for the State's legal practitioners.

The Society has focussed its submission on proposed amendments to the *Penalties and Sentences Act 1992* (Qld) (**PS Act**) and it has been prepared with the assistance of the Society's Criminal Law Committee.

At the outset, we note the Society is a strong advocate for evidence-based reform. The proposed amendments to the PS Act have been introduced in response to recommendations contained in the Queensland Sentencing and Advisory Council report, *Sentencing of Sexual Assault and Rape: The Ripple Effect* (**QSAC report**). While we acknowledge QSAC report's recommendations in relation to good character evidence, we also note the broader substantive commentary within the report that underscores the importance of judicial discretion in sentencing.

The Society's primary concerns stem from the risk the reforms will have in terms of diminishing the ability of courts to impose sentences that are fair, proportionate and reflect the individual circumstances of each case. The proposed amendments attempt to qualify how courts may regard good character evidence in the sentencing of sexual offences. However, this approach overlooks the fact that judicial officers already possess the necessary discretion and guidelines to evaluate character evidence in a measured and context-sensitive manner, including

instances where such evidence will carry little or no mitigating weight, particularly in cases involved serious offending.

In our view iterative legislative intervention of this kind risks creating rigidity where flexibility is required. Judicial officers are highly trained to recognise and apply sentencing principles in a manner that safeguards victims, ensures accountability and upholds public confidence in the system. Attempting to codify limitations on this discretion is legislatively cumbersome and unnecessary.

Amendments to Penalties and Sentences Act 1992

The Society's view is that section 9 of the PS Act need not be amended for the reasons set out below.

Clause 12 Amendment of s 9

Sentencing purposes

The Society does not consider any changes should be made to the general or specific sentencing purposes.

Section 9 of the PS Act provides a sentencing court with a range of principles and guidelines from which they can draw when sentencing an offender, whilst still retaining discretion as to the weight and relevance of each issue on a case-by-case basis.

Good character evidence as a mitigating factor

The Society does not support amendments of the kind proposed in Clause 12.

The prescriptive nature of these provisions could have the effect of restricting a judge's ability to exercise discretion as to the purposes, guidelines and principles relevant in each case and therefore the ability of the court to appropriately reflect the specific circumstances of each matter in any sentence.

Character evidence can be an important feature of sentencing. Given evidence of good character is so closely connected with other sentencing factors, it is challenging to separate it or prescribe the particular purposes for which it will be admitted. Removing character evidence except, in particular circumstances, would limit the judges' access to information which may be vital in formulating a sentence which both balances all relevant features including protection of the community and is tailored to the individual circumstances of a case.

In particular, the Society's concern with proposed section 9 (3C) is that it risks unduly constraining judicial discretion by drawing an artificial link between an offender's good character and the harm suffered by a victim. These considerations are not connected in all cases and are already properly weighed by courts under the well-established application of the instinctive synthesis in sentencing. The current approach allows judges to assess all relevant factors—including the seriousness of the offence and the impact on the victim—within a framework that promotes just, proportionate, and individualised sentencing. Preserving this discretion is essential to maintaining the integrity and effectiveness of the sentencing process.

Alternatives to Clause 12 provisions

Should the Bill progress, we suggest the following changes to protect against the concerns raised above:

(a) New sections 9 (3A) – (3C) be removed and replaced with "In sentencing an offender for an offence of a sexual nature, *good character evidence will not be considered to be a mitigating factor on sentence unless it is of assistance to the court in considering the matters to which it must have regard under section 9*". We note section 9(3D) would also require amendment, we consider this drafting more accurately reflects the recommendations of the QSAC report and the notion that being 'of good character' of itself, is insufficient to mitigate penalty, whilst still allowing the court to consider evidence of good character where it is determined to engage with other section 9 considerations.

(b) We also recommend adding community protection to the list of mitigating facts a court should consider in proposed new section 9(3B). This would enhance sentencing principles by ensuring judges can evaluate the broader impact on public safety when determining the appropriate sentence.

Statutory aggravating factor

It is not clear whether new section 9BB is intended to be an exception to the requirement to treat age as an aggravating factor or whether it is intended to provide guidance as to what constitutes exceptional circumstances. We consider further clarity is required, however in circumstances where it is the later, we suggest that the words "*or any other matter the court considers relevant*" should be added.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully

[redacted]

Genevieve Dee
President