CLAUSE NOTES

Sentencing Amendment (Good Character) Bill 2026

Clause 1 **Short title**

This clause provides that the short title of the Act will be the *Sentencing Amendment (Good Character) Act 2026*.

Clause 2 **Commencement**

This clause provides that the provisions of the Act will commence on the day it receives Royal Assent.

Clause 3 **Principal Act**

This clause provides that the Principal Act being amended is the *Sentencing Act 1997*.

Clause 4 **Section 9 amended (Conviction or non-conviction)**

Amends section 9 of the Principal Act by inserting a new subsection (2) which provides that, when exercising its discretion whether or not to record a conviction for a serious offence, a court must not have regard to a personal reference in support of the offender, or evidence or submissions in support of the offender's standing within, or positive contributions to, the community.

Clause 4 further amends section 9 by inserting a new subsection (3), which creates an exception to the requirement in new subsection (2). This operates through a two-stage test. First, the court must consider the submissions or evidence relevant to the offender's prospects of rehabilitation or risk of reoffending. Second, the court must consider it appropriate to do so, having regard to all of three criteria: the nature and circumstances of the offence, the harm the offence caused to a victim and a victim's vulnerability.

Finally, clause 4 further amends section 9 by inserting a new subsection (4) which states that the preceding new subsections (2) and (3) apply only in relation to an offender who had attained the age of 18 years at the time the conduct constituting the serious offence occurred.

Clause 5 **Section 11AA inserted (Matters not to be taken into account in sentencing offenders)**

Inserts a definition of a ‘serious offence’ which includes and builds on the broadened definition of ‘sexual offence’ in existing section 11A(1) of the Principal Act, which is itself amended by clause 6.

‘Serious offence’ is defined to mean such a sexual offence, or:

- a family violence offence, or attempted offence, within the meaning of the *Family Violence Act 2004*, except for section 35 of that Act;
- a crime under sections 178 or 192 of the *Criminal Code*, or an attempt to commit them;
- an offence of violence by one person against another that is dealt with on indictment, or an attempt to commit one; and
- an offence or crime under Commonwealth legislation that is substantially similar to an offence or crime referred to in the definition.

Subsection 11AA(2) operates so that section 11AA does not apply to sentencing for a serious offence committed when the offender was a child.

Subsection 11AA(3) is the statutory prohibition on good character evidence as mitigation. It provides that in determining the appropriate sentence for an offender convicted of a serious offence, the court is not to take into account, as a mitigating factor, a personal reference in support of the offender, or other submissions or evidence supporting the offender’s standing within, or positive contributions to, the community.

Subsection 11AA(4) provides an exception to subsection 11AA(3) via a two-stage test mirroring that in new subsection 9(3).

First, the court must consider the submissions or evidence relevant to the offender’s prospects of rehabilitation or risk of reoffending. Second, the court must consider it appropriate to do so, having regard to each of three criteria: the nature and circumstances of the offence, the harm the offence caused to a victim and a victim’s vulnerability.

Section 11AA also has two avoidance-of-doubt provisions.

Subsection (5) provides that nothing in the section prevents a court from taking into account any evidence other than the evidence specified in subsection (3) when determining the appropriate sentence for an offender convicted of a serious offence.

Subsection (6) provides that nothing in section 11AA positively requires a court sentencing an offender for an offence that is *not* a serious offence to give mitigating weight to the submissions or

evidence described in subsection (3) as it applies to serious offences, if the court considers it inappropriate to do so.

Clause 6 **Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)**

Clause 6 amends section 11A of the Principal Act to expand the definition of ‘sexual offence’ in that section by substituting a broadened definition. The new definition adds, to the existing one, offences under sections:

- 125D, 125E, 130B, 130C and 130D of the Criminal Code;
- 35(3) of the *Police Offences Act 1935*;
- 9 of the *Sex Industry Offences Act 2005*; and
- attempts to commit them.

Clause 6 further amends section 11A(2)(b) of the Principal Act. It states that new section 11AA does not affect the existing prohibition in section 11A(2)(b) on a court taking into account an offender's good character or lack of previous convictions if satisfied that the offender's alleged good character or lack of previous convictions assisted them in committing a sexual offence.

Clause 7 **Section 104C inserted (Application of Sentencing Amendment (Good Character) Act 2026)**

This is a transitional provision which stipulates that the amendments to the Act apply to sentencing, court orders and actions regardless of whether the offence was committed before or after the day on which the amending Act commences.

Clause 8 **Repeal of Act**

This automatically repeals the amending on the first anniversary of its commencement. The amendments are incorporated into the Principal Act and will remain in force after the repeal of the Amending Act.