

5 March 2024

Committee Secretary  
Housing, Big Build and Manufacturing Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Via email: [HBBMC@parliament.qld.gov.au](mailto:HBBMC@parliament.qld.gov.au)

**Re: Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024**

Thank you for the opportunity to comment on the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (the Bill).

As you may be aware, as Public Advocate I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.<sup>1</sup>

I note that the objective of the Bill is to decriminalise sex work in Queensland and is based upon the recommendations of the Queensland Law Reform Commission Report: *A decriminalised sex-work industry for Queensland* (the QLRC Report).<sup>2</sup> Changes to the Criminal Code in the Bill include repealing chapter 22A of the Criminal Code.

Chapter 22A includes a number of references to people 'with an impairment of the mind', a term which the QLRC Report found is 'outdated, discriminatory and stigmatising'.<sup>3</sup> The QLRC also made a reference to my report regarding offences in the Criminal Code that use this term, *A discussion of section 216 of the Queensland Criminal Code*, which was released in 2022.<sup>4</sup> I note that the definition of 'impairment of the mind' can be broad, and can unfairly disadvantage some people.

A 'person with an impairment of the mind' is defined in the Criminal Code as:

- '...a person with a disability that –
  - (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
  - (b) results in—
    - (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
    - (ii) the person needing support.'<sup>5</sup>

The Queensland Court of Appeal has expressed concern that the definition is so broad that it can include people who do not have 'any diminution in the capacity to acquire knowledge', and simply require some level of neurological impairment that affects the power to communicate, and that the definition could include a 'cerebral palsy sufferer of genius IQ'.<sup>6</sup>

Broadly, I support the repeal of chapter 22A which contains this outdated definition in reference to people with disability. As noted by the QLRC, there are already offences available in the Criminal Code that protect people with disability who are coerced into sex work.<sup>7</sup>

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<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) s 209.

<sup>2</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland* (Report No 80, March 2023).

<sup>3</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland* (Report No 80, March 2023) 147.

<sup>4</sup> Public Advocate, *A discussion of section 216 of the Queensland Criminal Code* (January 2022).

<sup>5</sup> *Criminal Code Act 1899* (Qld) s 1.

<sup>6</sup> *R v Mrzljak* [2004] QCA 420 at [68].

<sup>7</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland* (Report No 80, March 2023) 147.

Chapter 22A uses the term 'person with an impairment of the mind' in sections that would prohibit such a person being a worker, client, or even being present on the premises where sex work occurred.<sup>8</sup> As noted by the QLRC, this creates 'problems for people living with mental impairment who are able to negotiate consent as a sex worker, or who want to hire a sex worker.'<sup>9</sup>

As noted by the submission made by Queensland Advocacy for Inclusion (QAI) to the QLRC, 'the current approach is unnecessarily paternalistic, does not reflect the contextual nature of decision-making capacity, is inconsistent with contemporary understandings of supported decision-making, and could infringe the right to privacy.'<sup>10</sup>

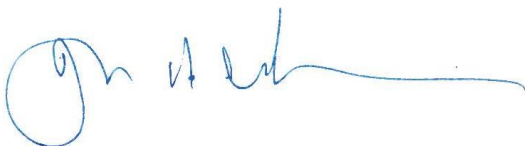
I will continue to advocate to seek a review of other parts of the *Criminal Code* that I believe do not match current community attitudes regarding adults with impaired decision-making ability, such as section 216, which was the main subject of my report that was referenced by the QLRC. This section prohibits a person with an 'impairment of the mind' from participating in consensual sexual activity (a defence exists where it is proven that the circumstances are not exploitative).

In the report, I called for a review of the criminalisation of sexual relationships involving people with an 'impairment of the mind'. Relevant to the current Bill, the existence of section 216 will potentially continue to criminalise sex workers and/or clients of sex workers with disability who fall within the problematic and overly broad definition of being a 'person with an impairment of the mind'.

Therefore, to properly decriminalise sex work and remove the unnecessary discrimination found in the *Criminal Code*, section 216 should be reviewed in order to allow people with disability to have sexual relations and for this part of the *Criminal Code* to be in line with contemporary values.

Should you wish to discuss any of the matters I have raised in this submission further, please do not hesitate to contact my office via email [public.advocate@justice.qld.gov.au](mailto:public.advocate@justice.qld.gov.au) or phone 07 3738 9513.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)  
**Public Advocate**

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<sup>8</sup> *Criminal Code Act 1899* (Qld) ss 229G, 229HA, 229I.

<sup>9</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland* (Report No 80, March 2023) 147.

<sup>10</sup> Queensland Law Reform Commission, *A decriminalised sex-work industry for Queensland* (Report No 80, March 2023) 147.