

21 March 2025

Fleur Kingham
Chair
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop
Brisbane Qld 4003

Via email: LawReform.Commission@justice.qld.gov.au

Dear President Kingham,

Nomination of law reform topics

Thank you for your letter of 24 February 2025 requesting my input into the QLRC's future law reform program.

I have a number of completed and current projects that might be of interest to the QLRC. These projects have been undertaken by my office in performance of my systemic advocacy function to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.

Section 216 of the *Criminal Code*

In January 2022, I published a paper titled 'A discussion of section 216 of the Queensland *Criminal Code*'.

This paper explores section 216 of the *Criminal Code 1899* (Qld) that effectively criminalises any sexual activity involving a person with an 'impairment of the mind' (an exception exists if the relationship is not exploitative). The paper explored certain issues around this provision, including:

- contemporary perspectives regarding the concept of disability;
- application of the section in the Queensland criminal justice system;
- approaches employed across other jurisdictions regarding the rights of people with disability to engage in sexual relationships; and
- the compatibility of the provision with current international, Australian, and Queensland legal frameworks.

The analysis revealed a number of issues, including the paternalistic nature of the provision and the fact that it is the most restrictive law of its kind in Australia.

I concluded that a review of section 216 was necessary but that this would require considerable sector engagement and consultation with a wide range of stakeholders, including people with disability. I recommended in the paper that the QLRC would be best placed to review this provision.

Queensland guardianship confidentiality issues

In August 2022, I published another paper titled 'Public accountability, private lives', which discussed limitation orders under the *Guardianship and Administration Act 2000* (Qld), as well as section 114A of the same legislation that restricts publication of the identity of a person who is subject to guardianship proceedings.

Section 114A prohibits the publication of the identity of a person who is subject of a 'guardianship proceeding' which can include any proceedings under the *Guardianship and Administration Act*.

There are exceptions to this prohibition on publication, including when a tribunal authorises the publication.

There are a number of issues with this prohibition, the primary one being that the adult subject of any guardianship proceedings cannot publicly identify themselves without first obtaining the permission of a court or tribunal. This approach disempowers the individual and represents a paternalistic approach.

I ultimately made a recommendation in the paper that section 114A should be repealed.

This issue has recently been explored in Victoria by the Victorian Law Reform Commission in their paper, "'I Want to Tell My Story": The Guardianship and Administration Confidentiality Law', where the paper explored the various issues involved, and proposed a number of reform options to improve the situation.

The VLRC report made references to other reports that have recommended the prohibition be removed, such as the recommendation made by the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (recommendation 6.12) as well as my report noted above (and I spoke with the VLRC in the course of their preparation of this report).

Adults with cognitive disability in the criminal justice system

I have recently embarked on a major project exploring the experiences of adults with cognitive disability in the Queensland criminal justice system. I anticipate that up to five discussion papers will be released over the next 18 months, each documenting a different stage of a person's journey through the criminal justice system in Queensland.

Two of these discussion papers have been released so far, the first on policing and the second on the courts (these papers can be found on the Public Advocate website here:

<https://www.justice.qld.gov.au/public-advocate/our-advocacy/justice-and-human-rights/adults-with-cognitive-disability-in-the-criminal-justice-system>).

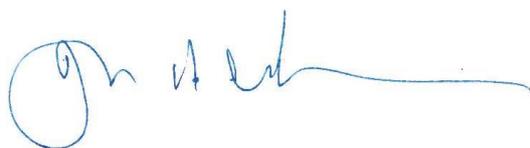
Following the release of all discussion papers and further consultation, a series of criminal justice system reform recommendations will be made to Government, which may then involve the QLRC. I am more than happy to provide an update to the QLRC directly when I am developing law reform recommendations.

Conclusion

In conclusion, I would nominate both section 216 of the *Criminal Code* and section 114A of the *Guardianship and Administration Act* as potential law reform topics that the QLRC might explore.

Thank you for the opportunity to nominate potential law reform topics. Should you require any clarification on matters raised in this letter, or would like to discuss any of them further, please do not hesitate to contact my office on 07 3738 9513 or public.advocate@justice.qld.gov.au.

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