



Speech By
Ali King

MEMBER FOR PUMICESTONE


Record of Proceedings, 19 April 2023

HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Resumed from 18 April (see p. 998), on motion of Mrs D'Ath—

That the bill be now read a second time.

 **Ms KING** (Pumicestone—ALP) (11.21 am), continuing: I return to my contribution in relation to the Health and Other Legislation Amendment Bill, particularly the extremely sensitive changes surrounding the operations of the Mental Health Review Tribunal and other relevant tribunals.

The new framework established by the bill allows for more flexibility for the recording of evidence and reporting of outcomes for tribunals, enhancing safeguards for privacy and confidentiality, and clarifying processes. In particular, it removes barriers to the electronic recording of proceedings of the MHRC and makes electronic recording the default recording method except where significant distress may be caused to participants. The bill amends the Mental Health Act to allow a person who has capacity to waive their right to representation in ways other than in writing—for example, verbally where a proceeding is electronically recorded—which is respectful of the wishes of the person and removes barriers to make sure proceedings are as smooth as possible. The Public Advocate particularly supported these changes. Dr Chesterman clearly noted the current requirement for a written waiver of the right to representation creates delays and barriers. For example, if evidence is being given by phone or video and no specific written waiver can be provided, proceedings may not be able to go ahead.

The president of the Queensland Law Society noted that the Law Society is supportive of the bill's intention to implement an electronic recording and transcription service for MHRT proceedings, and in relation to the exemption option for the recording of proceedings further said that the Mental Health Review Tribunal did a short trial a couple of years back where they had tribunal members record proceedings. One of the issues flagged at that time was concerns expressed by patients about the recording of those proceedings, so the provision of the exemption in situations where distress is experienced by the participant is an important one.

The Queensland Human Rights Commissioner commended amendments to change requirements around MHRT recordings as protecting rights to fair and public hearings and equality before the law but did note some concerns regarding the provision of discretion to record rather than requirement to record, while recognising that changes to the Recording of Evidence Act to impose a lack of discretion may have implications for other tribunal proceedings. Importantly, the Human Rights Commissioner submitted that the MHRT is a therapeutic jurisdiction, so if a requirement to record is in fact countertherapeutic then it may appropriately activate the exceptional circumstances situation. In some cases, severe distress at recording might mean that the person's right to health and to not be traumatised further by the proceedings outweighs the value of the contribution to their right to a fair trial that the recording would provide based on clinical advice. The commissioner expected that exceptions to recording would be rare, especially once recording becomes the default approach and standard for

all proceedings. Notably, the commissioner stated that equality before the law requires that every time you have an imposition on your rights—like being detained against your will—the commission believes that the underlying value is that people must have an understanding of their matter and be able to access information with regard to decisions made with respect to that matter.

This was a complex bill, and I want to thank the department in particular for their dedicated work with the committee as we worked through it as well as all of the submitters who took such time and care to explain the context. I commend the bill to the House.