



Speech By
Jim Madden


MEMBER FOR IPSWICH WEST

Record of Proceedings, 13 September 2023

LOCAL GOVERNMENT (COUNCILLOR CONDUCT) AND OTHER LEGISLATION AMENDMENT BILL

Resumed from 12 September (see p. 2580), on motion of Mrs D'Ath—

That the bill be now read a second time.

 **Mr MADDEN** (Ipswich West—ALP) (11.46 am), continuing: I rise to speak in support of the Justice and Other Legislation Amendment Bill 2023. Upon tabling, the bill was referred to the Legal Affairs and Safety Committee, chaired by Peter Russo, the member for Toohey, for consideration. The bill is an omnibus bill that amends a wide range of existing legislation. Notably, the bill amends the Criminal Code, the Penalties and Sentences Act 1992, the Youth Justice Act 1992 and the Victims of Crime Assistance Act 2009 to enhance the recognition of the death of an unborn child as a result of criminal offending in relation to a pregnant person.

The bill amends the Criminal Law (Sexual Offences) Act 1978 to remove restrictions that prohibit the identification of an adult defendant charged with a prescribed sexual offence prior to the finalisation of the committal proceedings. Other acts that are amended pursuant to the provisions of the bill include the Appeal Costs Fund Act 1973, the Cremations Act 2003, the Criminal Code, the Electoral Act 1992 and the Justices of the Peace and Commissioners for Declarations Act 1991, the Legal Profession Act 2007, the Oaths Act 1867 and the Public Guardian Act 2014.

In its report, tabled in July 2023, the committee made a number of recommendations—firstly, that the bill be passed. The committee also recommended that the Queensland government prioritise the development of a guide for the media to support reasonable reporting of sexual violence, in accordance with recommendation 84 of the *Hear her voice* report 2. The committee also recommended that the Queensland government monitor whether the naming of offenders unintentionally creates barriers for women to report sexual offences. It also recommended that the proposed reforms introduced by the bill relating to victims are accompanied with trauma-informing training for those interacting with victims of the criminal justice system, including legal services, victim services and investigation and prosecution bodies.

The committee recommended that the Queensland government consider the service and resourcing impacts that these reports will have on the victim support and community legal service sectors. It recommended that the Queensland government consider changing 'woman' to 'pregnant person' in proposed section 319A to better reflect the diversity and modern community expectations of Queensland. Finally, the committee recommended that the Queensland government continue to undertake work in relation to improving the safety of victims of domestic and family violence, noting the prevalence of systems abuse.

I will focus my contribution in support of the bill on the issue of destruction of clients' files by law practices and community legal centres as well as cost disclosure obligations for practitioners and law firms. The bill, if passed to become an act, will allow a law practice to destroy or dispose of routine client

documents in certain circumstances and increase the costs disclosure threshold for section 311 of the Legal Profession Act 2007 to \$3,000. The bill amends the Legal Profession Act to allow a law practice, including a community legal centre, to destroy any client documents held by the law practice if seven years has elapsed since the completion of the matter; the law practice has been unable to obtain instructions from the client despite making reasonable efforts to do so; and it is reasonable, having regard to the nature and content of the documents, to destroy the document or documents. The amendments also extend to receivership files held by the Queensland Law Society as if it were a law practice. Safeguards provided for in the amendments mitigate the risk that the amendments could be interpreted as authorising the destruction of such documents to the detriment of the client and others by providing disciplinary consequences for a breach of the provision. The amendments address the increasing risk to client privacy and confidentiality arising from the prolonged retention of clients' documents, both physically and electronically, that are no longer of legal utility and recognise the substantial storage costs for law practices and the Queensland Law Society in relation to the retention of these documents.

Regarding the destruction of clients' files and other documents, I note that the Queensland Law Society supported the amendments to provide enhanced legal certainty as to when a law practice may destroy clients' documents. However, the Queensland Law Society recommended that the bill be amended to expressly state that clients have the right to instruct their solicitor to return or destroy their documents at seven years or earlier, if the client wishes; the obligation for a law practice to retain clients' documents does not apply if the documents have already been returned to the client; and, finally, law practices may, in some circumstances, lawfully retain copies of clients' documents for their own purposes such as managing future law claims. The Australian Lawyers Alliance submitted that the seven-year time frame proposed by the amendment is a reasonable length of time and offers a good balance between the regulatory burden and protecting clients' privacy. The submission by the Department of Justice and Attorney-General stated that the government is committed to permitting law practices to dispose of routine clients' documents seven years after the end of the client's matter if the practice is unable to obtain instructions from the client about disposal of the file.

The bill also amends costs disclosure obligations of a law practice under the Legal Profession Act, including increasing the current costs disclosure threshold under section 311 from \$1,500 to \$3,000. Further amendments provide that an abbreviated costs disclosure obligation will apply if the total legal costs in the matter, excluding disbursements, are likely to exceed \$3,000 and no cost disclosure is required if the total legal cost of the matter, excluding disbursements, is not likely to exceed \$750. In summary, the bill proposes to increase the prescribed amount under section 311 of the legal practitioner act which triggers costs disclosure obligations from \$1,500 to \$3,000; provides that an abbreviated costs disclosure obligation will apply if the legal costs in the matter, excluding disbursements, are not likely to exceed \$3,000; and provides that no costs disclosure obligations will apply if the total legal costs of the matter, excluding disbursements, are not likely to exceed \$750.

In its submission the Queensland Law Society broadly supported the proposal to amend the legal practitioner act to increase the detailed disclosure threshold from \$1,500 to \$3,000, but it did raise three issues for consideration. Firstly, with regard to the abbreviated costs disclosure for matters below \$1,500, the Queensland Law Society expressed concern that the amendments will result in practices needing to provide abbreviated costs disclosure for legal costs between \$750 and \$1,500, something that is currently not required. The Queensland Law Society is of the view that this is contrary to the legislative intention to reduce the regulatory burden for law practices. The Queensland Law Society also recommended the \$1,500 should be maintained as the disclosure threshold amount so that small fee matters can be accepted without abbreviated disclosure obligations. The Queensland Law Society stated that this more appropriately facilitates access to justice, particularly for pro bono and smaller matters. The Queensland Law Society recommended a regular review of the prescribed amount to account for inflation and to ensure that thresholds are set at an amount consistent with intended purposes.

The second issue raised by the Queensland Law Society is that the Review of the Costs Disclosure Thresholds in Uniform Law, otherwise known as the uniform law review, be the single framework to be followed by the government with regard to disclosure obligations. I thank the committee for its hard work on this matter, particularly its chair, Peter Russo.