



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Public Information Legislation Amendment Bill 2018

4.00 pm, Monday, 3 December 2018

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine

Witnesses:

Hayley Richards: Acting Deputy Chief Executive Officer, Department of the Chief Minister
Karen Vohland: Executive Director Strategic Communications and Engagement, Department of the Chief Minister
Tom McCrie: Principal Legal Policy Officer, Department of the Chief Minister

PUBLIC INFORMATION LEGISLATION AMENDMENT BILL 2018

DEPARTMENT OF THE CHIEF MINISTER

Madam CHAIR: Good afternoon everyone and thank you for joining us again. I am Ngaree Ah Kit, the Member for Karama and the Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public briefing into the Public Information Legislation Amendment Bill 2018.

I also acknowledge my fellow committee members in attendance today: Lia Finocchiaro, Member for Spillet; and via teleconference Sandra Nelson, Member for Katherine and Robin Lambley, Member for Araluen.

I welcome to the table to give evidence to the committee from the Department of the Chief Minister: Hayley Richards, Acting Deputy Chief Executive Officer; Karen Vohland, Executive Director Strategic Communications and Engagement; and Tom McCrie, Principal Legal Policy Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of Parliamentary Privilege and the obligation not to mislead the committee applies.

This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions.

I will ask each witness to introduce themselves first.

Could you please state your name and the capacity in which you are appearing?

Ms RICHARDS: Hayley Richards, Acting Deputy Chief Executive Officer, Department of the Chief Minister.

Ms VOHLAND: Karen Vohland, Executive Director Strategic Communications and Engagement, Department of the Chief Minister.

Mr McCRIE: Tom McCrie, Principal Legal Policy Officer, Department of the Chief Minister.

Madam CHAIR: Thank you very much. Ms Richards, would you like to make an opening statement

Ms RICHARDS: Yes please.

Madam Chair thank you for the opportunity to brief the committee on the Public Information Legislation Amendment Bill 2018. The Public Information Act was first introduced in 2010 to ensure appropriate use of public funds when providing information to the public. This includes ensuring that public information is factual and free from political bias.

The act establishes a transparent and accountable mechanism for the review of public information produced by public authorities. However, feedback from government agencies indicated that the current wording of the act and the Public Information Regulations can be confusing, contrary and open to interpretation which has led to unintended breaches. The act is also in need of updating to reflect the use of contemporary mediums like the use of social media.

There have been occasions where agencies have not published or hesitated to publish information where it is appropriate and beneficial to do so out of concern for creating a technical breach of the act.

For example, during a recent visit by the Prime Minister of Japan agencies were required to ensure that the Chief Minister did not appear in photographs with the Japanese or Australian Prime Ministers so that images could be used in government publications without breaching the act. This and other similar examples are clearly unintended outcomes of the legislation as it stands.

The confusion surrounding requirements of the act is also evident in the cases reviewed by the Auditor-General and published in her 2018 report. In responding to the Auditor-General's findings, the relevant agencies advised that they had published the public information 'in the honest belief that its content were in compliance with the act'. This highlights the differing interpretations of the act resulting in unintended breaches by practitioners or decisions to refrain from publishing relevant images and information.

Another example is if the Minister for Education or Chief Minister were to visit a school to attend an assembly or hand out awards, it would be desirable to publish photos of the student or students with the Minister or Chief Minister in the school newsletters or use to post on websites, Facebook et cetera—something that would be an expectation of parents and the students. Under the current act, a photo of a student with the Minister would be in fact a breach of the act.

The overarching aim of the proposed amendments is to assist public authorities in their compliance with requirements under legislation and to reduce unintended or technical breaches that are not in the spirit of the act. The majority of the proposed amendments are contained in section 6(2) of the act which sets out contraventions of the act and is used by public authorities when preparing public information, as well as by the Auditor-General when reviewing particular pieces of public information.

Key amendments include:

- consolidating obligations spread across the act and the Public Information Regulations to ensure that all obligations are contained in a single section of the act
- strengthening requirements in relation to information containing facts, statistics and data by removing any inconsistencies created by using different terms across the act and regulations
- increasing consistency in application across government by redrafting commonly misinterpreted obligations including incorporating the obligation to distinguish a statement of facts from a statement of comments into other, more definitive obligations
- clarifying the obligation to identify facts and comments by replacing the current requirement to distinguish facts from comments with a simpler requirement that facts must be presented accurately and clearly identified through appropriate referencing
- highlighting that the requirement to source facts, statistics or data can be met by referencing a website or a contact person who can provide the data source—it is not practical to include source information in all publications and this change will give agencies greater certainty on this obligation
- removing unintended prohibitions on the use of images of a Minister by introducing a contemporary and technology neutral definition of advertisement to mean published by the purchase of media placement under a commercial arrangement. It is noted that the current act and regulations do not include a definition of advertising
- providing additional restriction on the use of images of a Minister and information other than advertising to require that a Minister must have a sufficient connection with the content of the information (specified to be either the Chief Minister, whose responsibility extends across all portfolios or the Minister with allotted responsibility under Administrative Arrangement Orders)
- expanding the operation of the act to prohibit the use of a Minister's message in the same circumstances where it would be a contravention to use the image of a Minister
- contemporising the legislation to include social and digital communication channels
- improving the practicality and usability of the act by introducing a public purpose test for the content of public information to replace the requirement for compliance only with the criteria specified in the regulations.

In addition, the Bill broadens the overarching criteria the Auditor-General may consider to be in public interest to ensure that the right information is captured and not limited to an exhaustive list.

To support the implementation of, and compliance with, the amended legislation the Department of the Chief Minister will develop guidelines and training material that will inform public authorities when preparing public information.

When the act was introduced in 2010 careful attention was paid to the role of the Auditor-General particularly to ensure that the independence of the Auditor-General was not compromised. Under the proposed amendments, which were developed at arm's length from our Auditor-General, the Auditor-General retains full discretion about how a review of public information is to be conducted while having regard for the criteria outlined in the act and regulations. This discretion has not changed since the act was introduced.

The proposed amendments outlined in this bill are intended to strengthen the legislation by clarifying requirements to help agencies comply with the standards and criteria outlined in the legislation, as well as support the Auditor-General's role in determining when the legislation is contravened.

Thank you for the opportunity to address the committee. Karen Vohland, Tom McCrie and myself are available to answer any questions you may have regarding the provisions of this amendment bill.

Madam CHAIR: Thank you very much. I will now open it up to the committee for any questions they may have in regards to this bill.

Mrs FINOCCHIARO: Thank you. Who was consulted in the development of this bill?

Mr McCRIE: Consultation was across government communications directors led by the Department of the Chief Minister.

Mrs FINOCCHIARO: Was the Auditor-General consulted on development of the bill?

Mr McCRIE: To ensure the independence of the Auditor-General, no she was not consulted on the development of the bill.

Mrs FINOCCHIARO: One of the changes to I think 6(2) you mentioned was highlighting the requirement to reference some sort of material. I wanted to know if a ministerial press release would amount to reference material.

For example if the department is putting out information in relation to an announcement about spending—a stimulus package or anything of that nature—and the department referenced the minister's press release as the source document, would that count as a statement of fact? As opposed to referencing the census report or something more substantive.

Mr McCRIE: Sorry, could you just run that past me one more time.

Mrs FINOCCHIARO: I think it was said that we would highlight that there is a requirement to reference. I guess it is to get around that issue of is it a clear fact or is it a comment. There will be a requirement to reference.

If the material being put out by government referenced a ministerial press release, would that be a sufficient reference to justify the publishing of that information as opposed to the information might be referencing a report that came out or the budget?

Mr McCRIE: It would depend if that information was a fact. The requirement to source facts, statistics and data—the change that is happening is to make it clear that you do not have to include the full reference within that document. It is clarifying that you can put a link to a website or a reference to a particular person who can provide further information.

It is really about making sure that the information is available to the public without necessarily having to have it in the public information itself. The other change in relation to that point is previously that obligation was contained in the regulations and it was only data that had to be sourced. So it has actually been expanded to include facts including comparisons and also statistics.

Mrs FINOCCHIARO: Will that remain in the regulations? Or it is going into the bill?

Mr McCRIE: Yes. All of these obligations have been promoted into section 6 (2) so that any obligations are contained within the act. Previously you had to look across the act and a few different regulations to understand what all the obligations were.

Mrs FINOCCHIARO: Thank you. In relation to photos, it was said that the member would have to prove sufficient connection. So if it was the Chief Minister he can basically be in any photo because he is whole of government or the ministerial responsible for that portfolio. What about a member who is acting in the role of the Chief Minister or the minister?

I am thinking for example, this government has assistant ministers. If an assistant minister was the assistant minister for education and they were presenting the awards on behalf of the Minister for Education, are photos of that assistant minister with the student envisaged to be allowed under these new changes?

Mr McCRIE: The act uses the definition of minister that is picked up by the Interpretation Act, so it would include any acting ministers. The definition of relevant minister, this is in section 67), means the minister to whom responsibility for the area of government is allotted under the Administrative Arrangements Order. It depends how that portfolio responsibility is allocated under the AAO.

Mrs FINOCCHIARO: Okay. Thank you.

Madam CHAIR: Are there any questions down the line?

Mrs LAMBLEY: I have a question. I have not read the legislation but I did hear you talk about the unintended breaches. Is that referred to in the legislation at all? The unintended breaches or unintended consequences. Is that a term that is used, unintended?

Mr McCRIE: No, that is not a term used in the legislation. That was used in the opening statement to describe situations where government agencies have in all good faith thought that they were complying with the legislation but there was a breach in that piece of public information.

Mrs LAMBLEY: Can you explain to me again, you used the example of the education minister having a photo taken with students and not being about to use that. How is that in the best interest of Territorians to use that? Why will we be allowing this to occur now? I am not clear on the rationale.

Ms VOHLAND: Largely it is about the expectation of parents and children. For example if they are receiving an award and it is being presented to them by the Chief Minister or the minister, there is a reasonable expectation by the parents that would have that image in the newsletter from the children's perspective. That is interpretation.

Mrs LAMBLEY: In the school newsletter you are talking about?

Ms VOHLAND: Correct. Another example is the Chief Minister's awards which were recently announced. We are not able to use any of the images of the recipients with the Chief Minister in any government material and cannot use them in the image library because they contravene the act to do so.

Mrs LAMBLEY: Just going back to the intent of the original legislation, why was it deemed not appropriate to do that in the first place? I am just trying to work out what the shift is. In the current legislation what is the rationale for not allowing that to happen?

Mr McCRIE: The intent of the bill is to ensure that public funds are use appropriately when providing information to the public and ensuring that public information is factual and free from political bias. In the current act there is no definition of advertising and taken in its broader sense that includes all communications whether or not there was payment for the advertising or whether it is advertising as you would immediately take that to mean.

The amendments insert a definition of advertising which is section 6(7) which means published by the purchase of media placement and a commercial arrangement. You still will not be able to publish an image in that paid advertising, this is where it is put on the school's Facebook page or sent in the school newsletter. So it really brings it back to the original intent of that legislation.

Mrs LAMBLEY: Okay. So you have made the assessment that people want, in the case of the education department, they want their children to have a photo with the education minister in the newsletter so you are allowing that to happen because some people want that?

Ms VOHLAND: That is correct. There is a general expectation if at those particular events that material would be able to be circulated by the school newsletter but under these circumstances it cannot be, yes.

Mrs LAMBLEY: So for eight years we have had a situation where they cannot do it, at least. Now it is a loosening up of rules and the legislation.

I do not have any more questions. Thank you very much.

Mrs FINOCCHIARO: Mr McCrie, could you run me through your comments around advertising again? The act has a definition of advertising in the common language sense of the work. Do you mind just running over that? You talk, I will listen.

Mr McCRIE: The act in its current form does not have a definition of advertisement. If you take a plain English definition, so whether through an online dictionary, Macquarie or something similar it is in really broad terms and not what in communications you would expect an advertisement to mean. In any event, there are multiple interpretations of what advertisement might mean.

To clarify this, a definition has been inserted in section 6(7) which means an advertisement published by the purchase of media placement under a commercial arrangement. The definition of advertisement is significant because it is picked up in the two key obligations relating to images of a minister in section 6 (2)(c) and (d).

Mrs FINOCCHIARO: Do you mind going further with that? Material must essentially be purchased to constitute advertising material. Does that mean a photo of a minister or the Chief Minister can be used but only if it is in advertising as defined now or will be?

Mr McCRIE: Section 6(2)(c) means that basically an image cannot be used if it is in an advertisement then paragraph (d) goes on that for public information that is not an advertisement then an image of a minister can be used but the additional restriction has been placed that it must be the Chief Minister or the relevant minister as defined.

Mrs FINOCCHIARO: Right. So a photo of a minister or the Chief Minister cannot be used in advertising if it is purchased except if it is directly relevant to their portfolio? No?

Mr McCRIE: Not quite. So if it is an advertisement then no.

Mrs FINOCCHIARO: Under any circumstances? No matter how relevant it is?

Mr McCRIE: Under any circumstances. No matter how relevant. It is only if it is.

Mrs FINOCCHIARO: If it is not an advertisement then it is only if it is relevant.

Mr McCRIE: That is correct.

Mrs FINOCCHIARO: Okay. Thank you.

Madam CHAIR: Can I just ask a question in regards to let us say, departmental annual reports. At the moment is it true in saying that the current legislation allows for the Chief Minister to have his photo and Chief Minister's message in the annual report?

Ms VOHLAND: The Chief Minister's message can be, but not the photograph.

Madam CHAIR: Also Karen on that, none of the photos that appear in the document is able to have the Chief Minister in there.

Ms VOHLAND: Or any ministers.

Madam CHAIR: Or any other minister.

Are there any further questions?

Thank you very much for leaving us with that insightful amount of knowledge. On behalf of the Social Policy Scrutiny Committee, thank you all for appearing before us today.