



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

15th Assembly

LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

Public Hearing Transcript

12.30 pm, Tuesday 28 April 2026

Litchfield Room, Level 3, Parliament House

Members: Mrs Laurie Zio MLA, Chair, Member for Fannie Bay
Mr Matthew Kerle MLA, Deputy Chair, Member for Fannie Bay
Mrs Oly Carlson MLA, Member for Wanguri
Mr Dheran Young MLA, Member for Daly

Witnesses: *Private Citizen*
Professor Lorne Neudorf

Private Citizen
Stephen Argument

Department of Treasury and Finance

Mick Butler: Deputy Under Treasurer, Economics and Financial Management

Sarah Rummery: Deputy Under Treasurer, Revenue and Corporate

Attorney-General's Department

Hannah Clee: Acting Director Legislation and Legal Policy

Douglas Burns: Acting Deputy Director Legislation and Legal Policy

Office of the Parliamentary Counsel

Jessica Black: Acting Chief Parliamentary Counsel

The committee convened at 12.30 pm.

INQUIRY INTO THE REVIEW OF HISTORICAL REGULATIONS
Professor Lorne Neudorf

Madam CHAIR: My name is Laurie Zio. I am the Chair of the Legal and Constitutional Affairs Committee. We also have here Oly Carlson, Member for Wanguri; and Dheran Young, Member for Daly. Online we also have Matthew Kerle, the Member for Blain.

On behalf of the committee, I welcome everyone to this public hearing of the inquiry into the review of historical regulations. I welcome via videoconference to give evidence to the committee Professor Lorne Neudorf. 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 apply. This is a public hearing and will be webcast through the Assembly's website. A transcript will be made for the 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 the committee to go into a closed session and take your evidence in private.

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

Prof NEUDORF: Thank you so much, Chair. My name is Lorne Neudorf. I am professor and Dean of Law at La Trobe University, and I am appearing as an individual.

Madam CHAIR: Would you like to make an opening statement before we start asking questions today?

Prof NEUDORF: I would be delighted, if that is okay?

Madam CHAIR: Go ahead.

Prof NEUDORF: Chair and members of the committee, thank you for the opportunity to appear today and to assist with your inquiry into the review of historical regulations in the Northern Territory.

By way of background, I am the Dean of Law at La Trobe University and I currently serve as legal adviser to the Senate Standing Committee for the Scrutiny of Delegated Legislation in the Commonwealth. I appear today in a personal capacity and the views I express are my own.

This inquiry presents a significant opportunity for the Northern Territory. At its core it goes to the quality, accessibility and accountability of delegated legislation and to the important role of the Legislative Assembly as lawmaker-in-chief.

As I note in my written submission, regulations—which I will also refer to as delegated legislation—are an exercise of legislative power delegated by the Assembly to the executive government. That makes oversight of delegated legislation a central responsibility of the Legislative Assembly, not just a peripheral one. One of the most effective tools for supporting that oversight is a system of periodic review, such as a sunset regime. There are a number of benefits to such a system. I will briefly touch on a few of those.

First, it ensures delegated legislation remains necessary and fit for purpose. Over time regulations can become outdated or misaligned with current policy settings. A periodic review creates a structured opportunity to revisit those instruments and assess whether they continue to serve their intended function. Importantly, when an instrument is remade this process can be informed by fresh public consultation, enabling those who are affected by the law to identify deficiencies, unintended consequences or areas for improvement. In that way periodic review not only tests the continuing need for that regulation but can also strengthen its quality and effectiveness through engagement with the community.

Second, it supports accessibility and clarity of the law. Without a mechanism for regular periodic review, the statute book becomes cluttered with historical instruments, and this makes it difficult for practitioners, officials and members of the public to identify the current law. A well-maintained body of delegated legislation is essential to the rule of law, including the idea that the law should be capable of being understood.

Third, it enables modernisation. Drafting practices evolve over time. Language that was once standard might now be unclear or outdated and so periodic review allows regulations to be updated so they can reflect contemporary drafting standards and they become more accessible.

Fourth, lastly and probably most importantly from a parliamentary perspective, it creates an opportunity for fresh scrutiny. Committees such as this one play a vital role as the eyes and ears of the legislature in relation to delegated lawmaking. A sunset process ensures that instruments will come back before the parliament every so often, allowing them to be considered against current scrutiny principles and expectations.

I note that there will be some resource implications associated with this sort of system. It requires planning, coordination and some adjustment within agencies, but I believe that those should be understood as investments in the quality of the law and in democratic accountability.

Through this inquiry the Northern Territory is well placed to approach this task in a deliberate and forward-looking way. There is an opportunity not simply to replicate models that you might find elsewhere but to design a system that is tailored, efficient and contemporary. In that respect, I believe the use of technology, possibly including developments in artificial intelligence, could assist with tracking instruments, supporting review processes and managing the transition to a new regime. Used appropriately and with human oversight those tools can help reduce administrative burdens and could improve the effectiveness of a sunset framework. Therefore, I think this inquiry provides an opportunity not only for the Northern Territory to strengthen its approach to delegated legislation but to potentially position itself as a leader in how it approaches delegated lawmaking.

A carefully designed system of periodic review can help ensure that regulations are current, coherent and accessible while reinforcing the central role of the Legislative Assembly in overseeing the exercise of delegated lawmaking power.

I will be pleased to elaborate on any aspect of my submission and to assist the committee in its deliberations.

Madam CHAIR: Thank you so much. I really appreciate that opening statement. You covered off one of the things that I was going to talk about.

You talked about sunset and implementing a sunset clause to legislation, and specifically we are talking about regulations here. With the size and the capacity of the Northern Territory, have you seen that work in jurisdictions of different sizes and different capacities? We have just as much legislation with a small number of staff to be able to manage that and sometimes we have capacity limits in regard to the skills that people have in these jobs. Do you think that would work for the Northern Territory if we were to recommend it?

Prof NEUDORF: That is a great question. I think that there would be a tailoring process around some kind of a sunset regime that would enable the Northern Territory, as a smaller jurisdiction with less resources perhaps in some ways than other jurisdictions, to be able to manage that effectively. For instance, 10 years is often seen as the standard timeline in which instruments may be automatically repealed and remade. That may need to be calibrated to some extent for the realities or the requirements that you have in the Northern Territory.

I would say that technology—lots of development is going on in artificial intelligence, for example. You could harness the power of technology to try to minimise the administrative burden around this sort of regime, so getting the benefits of it without the full administrative cost in a sense, to try to find that right balance in terms of what is going to work best for your jurisdiction.

Madam CHAIR: I am interested to know a little bit more about this AI, the tools that you could use with technology. Is it being implemented in any other jurisdictions? There is obviously privacy and all that kind of stuff that we would have to manage before implementing anything like that. Is that working anywhere currently?

Prof NEUDORF: It is a great question; thank you so much for it. I have not seen that yet in my research, but I did deliver a public lecture in the Australian Parliament House in Canberra on AI and legal scrutiny. I actually did a test where I tested five AI platforms to see if they could actually do that work effectively or where the limitations were.

It is sort of an evolving space, I would say. The parliaments have treaded quite slowly and cautiously in relation to that technology, for some of the concerns you have already mentioned about privacy and confidentiality. But I think in a way, designing the right tool for the right job—it might not be that an AI platform could take over the whole space, but maybe as a way of flagging ‘this instrument is coming up for review in a certain period of time’. It might be repealing in six months or a year from now, it starts to trigger other processes that have human intervention in them. The idea would be to map out what is required in terms of all those tasks and then see which ones might be appropriate for automation or for the use of an automated tool in such a way.

Madam CHAIR: Noting that this is not just about me and my interests and what I want to learn more about, I will open up to the floor for further questions.

Mrs CARLSON: Thank you, Professor Lorne. Today we have had an incident with no printers here, and I am concerned sometimes when technology is involved the effect that has on some of the decisions we make. AI is obviously progressing quite quickly in some instances. We have such vast needs in the Northern Territory with a very specific landscape, so sometimes that can be one of the limitations as well. How can we address some of those things?

Prof NEUDORF: I absolutely agree there are very significant risks around the use of automation and technologies. The printers are not working today. That might seem like a minor matter, but when it comes to something where there is a really important system that is offline or not working, it can create real challenges.

I am not suggesting at all that we are replacing policy formation and really thinking through the law and what the law should be and consultation with communities. I am not suggesting replacing any of those things with automation, really

more just on the administrative side. I might point to an example. In the Commonwealth the committee I work with in the Senate, one of the scrutiny principles of that committee is to look around automation of decision-making. The committee has concerns about that, for example. That would be where there is a discretionary decision about an individual person and it might be a tool that is being used, an AI tool perhaps, that is going to make a decision that impacts someone. I am not talking about that at all; it is really more about the process of the sunseting.

In a way the NT does not have a current regime for sunseting, and it is a bit of an outlier in Australia in that sense. All the other jurisdictions, including the ACT, do have some form of a sunseting regime. Again, it varies by year—it might be 10 years or 15 years—and sometimes big chunks of legislation are exempted from those because the consequences of having something repealed might be very significant, so there might be certain exemptions.

In terms of transitioning into that sort of regime, which has a lot of benefits actually, technology could be used to assist in a way. I think we are kind of 'old school' in other jurisdictions; people use maybe a Post-it note on their monitor and say, 'This instrument will repeal in a year from now'. If they miss that it is a big deal because then the law is no longer in effect anymore; it happens automatically. I think having a smoother process to administer a sunseting regime, technology might be well-suited to that sort of task, which is just cutting down the administrative burden. But I understand what you are saying, the challenges of the NT in its own way—the big geography obviously and the smaller population. There are certainly challenges and resource challenges with that. Technology could assist, but again in a responsible way with human oversight.

Mr YOUNG: It is quite interesting. I went down to a legal and constitutional affairs conference in Melbourne. I think it was someone from Canada who spoke about AI input in terms of drafting legislation, making amendments to legislation. It was quite fascinating in terms of you do need to be careful and balance it out because obviously with AI you are getting whatever the input is and then that output is what is being inputted into those different AI ChatGPT styles. Each one is so different, so it can be quite different in terms of what platform you are using as well. My question is around that. How do you manage that, and in the NT? As Oly just stated, the demographics here are quite different. We have a large Aboriginal population of over 30%. Usually that input is not necessarily taken into account. How do you ensure that there is cultural safety over that?

Prof NEUDORF: Canada is my country of origin as well. You may be speaking about Alberta. There was AI being used to draft regulations around the Alberta whisky labelling, so what counts and what does not count as Alberta whisky. They were using AI as a test case in that context.

I am not suggesting that AI is being used here to make the regulations themselves or to make any kind of policy adjustments; it is really about administering the system.

If you think about the reasons for why we want to remake regulations every 10 years through a sunseting regime, it is to facilitate more engagement with the community. There can be a law in the books from 1930-something or 1940-something that no-one has looked at in a very long time. Having that chance to freshly consider: is this law working; is it fit for purpose—you mentioned First Nations communities. Technology might be able to facilitate access to communities. Instead of travelling around you could, for example, have online hearings, like we are doing today.

When I am looking at AI and this process, I am looking for opportunities to further the values and the good parts of it essentially, not to take anything away. With technology, we are in the driver's seat and in control of how we use technology. Making sure there are oversights, safeguards and appropriate use of it is really important.

In this context it might require some kind of bespoke solution. You have probably heard about AI agents. You can develop your own customised AI tool. There can be various privacy safeguards built in there. The information does not get used to train that AI model, for example. There are ways which, in my industry of law, law firms are using these tools. There is a lot of commercially available ones you can customise in the context of giving advice to a client.

I will give you an example from the legal context of where that technology might be helpful. You could input an old regulation into that AI and it could come up with a list of questions that you could then ask the community: is it working in this way or that way? You can summarise. If you look at a regulation, this stuff is not digestible by average people. It is hard for me to read it. Working with the Senate committee, I see 40,000 pages of it a year that go through that committee. There is a lot of technical words in there. Maybe a tool could be used in a way to improve accessibility and understanding of regulations so you get a better level of engagement out of that community when it comes up for sunseting every 10 years. You can get that easy-to-access version of the law and it helps people to understand what it is doing.

Mr YOUNG: In your submission you note there is a need for ongoing policy reforms of subordinate legislation and suggest the parliamentary committee may be tasked with this role. Can you please expand on this?

Prof NEUDORF: Can you point me to the place in my submission? I would like to see exactly what the context was.

Mr YOUNG: I will try to get it up on my computer.

Prof NEUDORF: Sure.

Mr YOUNG: Does someone else have a question in the meantime? I will try to find this.

Madam CHAIR: I can ask questions.

Also in your submission you referred to drafting practices in the NT to repeal amending regulations on the day following their commencement. You noted that this could raise questions about legal effectiveness and disallowance and stuff like that. You also provided two options in the address in your submission: a legislative framework clarifying that the legal effect of disallowance would be to reverse the relevant changes made by the amending instrument—I did not have my speaker on again; I apologise.

Prof NEUDORF: I can hear you perfectly.

Madam CHAIR: I am more worried about the recording here; they probably cannot hear me. That is okay; we will keep going.

You noted in your submission that there are two options: the legislative framework clarifying that there is legal effect of disallowance would be to reverse the relevant changes made by the amending instrument; or changing drafting practices so that instruments are repealed only after the conclusion of their disallowance period. Is there one preferred option? In these two choices would you prefer one over the other?

Prof NEUDORF: Both would achieve essentially the same goal, which is to allow the Legislative Assembly to have the opportunity to consider the instrument and to effectively disallow it within the relevant period. I suppose my view is always pragmatic. Changing law in legislation to require that might be a higher hurdle than just changing practice sometimes. If you can achieve that result through practice that is probably an effective way of doing it, at least to start with. All the actors have to understand why that is the case.

Repealing an instrument and amending regulation on the day following its commencement, in a sense, it does not, in my view, fully respect the legislature's opportunity to review, scrutinise and then disallow that. There is a question about what would be the effect of this disallowance if you disallow an instrument that has already been repealed. There is a complex legal question there. If the practice were to change to wait until that disallowance period had expired and then repeal that instrument, it would provide that same outcome; that it is clear that disallowance would have that effect.

Legislative change is not bad, but I think for this particular one change it is probably—I do not know if it is an achievable thing to get unless there was a whole package of changes coming in, it could be added to that package. I think changing practice would be a good first step in relation to that.

Madam CHAIR: Matt, do you have any questions before I go back to Dheran?

Mr KERLE: You just asked the one that I was going to ask.

In your submission you note that tabling and publication of an explanatory statement for regulations is another way to ensure consultation information is made public and transparent. Do you think such a requirement should be introduced in the NT? What do you think the benefits or challenges would be of tabling and publication of the explanatory statement for regulations, not just legislation?

Madam CHAIR: Sorry, Matt, I will interrupt because I think that is the question that Dheran was asking before, and we were trying to find exactly where it was in the submission.

Mr KERLE: Okay.

Prof NEUDORF: At the outset I would say that explanatory statements are extremely valuable. My view is every law should have an attached explanatory statement. We are talking about an Act of the legislature or a regulation. It is very helpful. The reason for that is it explains in plain language what the impact of that law is; how it actually works. It is much more digestible to, let us say, the average user of the law who is going to come in and it is hard to understand technical text, but written in plain language it is useful.

The second thing is it provides an explanation and a rationale around that law. Law is a little bit—I will not say the word 'random', but there are lots of little bits and pieces everywhere. It seems a bit haphazard if you are just browsing the statute book, whereas an explanatory statement explains why that law is coming into effect; why it was thought necessary; what kind of consultation; maybe it arose out of consultation with the community—there is a need there; this is addressing that particular need. It gives you a lot more detail and understanding of the purpose of that particular instrument. I think it is a valuable attachment. Technically, it is not the law, but it gives a really great insight.

In terms of the burden, there is an administrative cost of that. Is that something that maybe technology could assist with summarising in plain language, with a human editor and human oversight, of course. That sort of technology might be used to cut down on the work that might be required.

The other thing it does is it shows the scrutiny committee—which this committee is exercising that function, of regulations—that consultation was carried out or sometimes not adequately in relation to that instrument. It provides

an opportunity then for a public record where the committee can go back and interrogate and query, 'You did not really talk to this group and they are really going to be affected by that. Why didn't you talk to them?' It creates that nice sort of public record.

If you look at the Commonwealth committee for instance, often where the committee raises concerns those concerns end up being resolved through changes to the explanatory statement not just to the law—and sometimes not to the law at all—but it provides further justification, 'Okay, we may be impairing rights and liberties in these ways, but here is the extraordinary reason that we are doing it'. It creates a culture of justification, which is important in relation to explanatory statements. They have a lot of benefits. If you are just dealing with statutes and legislation, it is very technical and hard to understand for most people. Explanatory statements bring it to a wider audience and enhance the clarity and accessibility of law and provide that justification for the law, so I think it is really important.

Mr YOUNG: Thank you, Lorne, and thanks, Katie, for helping out. It is on page 19 of your submission—you just responded.

Madam CHAIR: That was what he was just talking about, because Matt asked the same question.

Mr YOUNG: Okay; I was too busy focused on this. It was especially particular to scrutiny of the policy. This is the main bit to that.

Prof NEUDORF: What I see now—and this is why I asked you for the reference—my apologies. I had appended to this submission another submission I had made to New South Wales and it is part of that submission. My submission to the NT was four pages long, so this is going into the other one, but I see now the paragraph that you are referring to.

I think what I was proposing there is there was a question that had arisen in New South Wales around the function of the committee: should the committee look at policy as well as technical rule-of-law basic standards? There was a question about that. How broad should the committee's mandate be and the scope of what it is looking at? In the Commonwealth it only does technical scrutiny; the committee does not do policy scrutiny of any kind, so on the committee the senators will never ask themselves: is that a good or bad idea? They look for certain qualities of the law: does it take rights away? If it does take rights away, is there judicial review or a merits review? Have people been consulted adequately? Is the language clear and free of any defects? We call that technical work, and it is not about whether it is a good or bad idea to do the thing they are trying to do through the instrument but about the quality of the lawmaking: has it made in a defensible way that we would expect in our democratic rule-of-law society?

In the UK there are committees that do both. The danger with doing both is the politics. The Senate committee in Australia works by consensus and unanimity; it does not have dissenting reports or minority reports. All the senators from different parties can work together because it is not a policy committee; they are looking at shared values and fundamental things about the legal system that we would expect of any law. When it comes to that, it is easier to get that consensus. When you start bringing in policy—and that is what I was talking about here in this New South Wales submission—the committee could become less functional and less effective probably because then it becomes a forum for policy debates as opposed to the technical rule-of-law scrutiny that the Senate committee does in the Commonwealth.

There are pros and cons, but what I was saying in this New South Wales context is you could have a different committee look at the policy, maybe not the one that is doing this other scrutiny work, to separate those functions. You could have a committee working by consensus without it becoming a politicised committee in a sense. That was the point of that submission. Does that answer your question, member?

Mr YOUNG: Yes, it does. In terms of the committee makeup—it has been a systematic issue here since self-government, I would say—around scrutiny of legislation, the Legal and Constitutional Affairs Committee. I suppose the makeup in other jurisdictions is usually balanced out between crossbench members, government members, and the reason for that is to take the politics out of the committees and just be directly speaking to the submissions put forward by groups and then report. Would you have any advice on best practice in terms of ensuring that politics stays out of the committees? It is best practice, best advice to ministers on that. I am not having a dig at this government; it has happened across all governments since self-government here.

Prof NEUDORF: In that respect, the composition of the committee, I think the federal Senate does provide a good gold standard in that regard. That committee is made up of three senators from the government party and three from the opposition, so it is perfectly balanced. The Chair is from the government party and the Deputy Chair is one of the opposition senators. There are six members and they have to work together to do anything. It does not have that policy remit, so it is not looking at policy.

By the way, I do not want to be taken for a second as saying you should never look at policy with delegated legislation or regulations; you should look at policy because that is lawmaking like any other kind of lawmaking. There are winners and losers and choices are being made all over the place, but the question is: what should this particular committee do?

If you are going to have an effective scrutiny committee of delegated legislation, you should have one on the policy side—and that will have politics and everything else come into it, because people have different views on what the good and bad policy is going to be—but when it comes to basic standards, rule-of-law standards, we are talking about the way in which the law has been made. Has it been made in a way that is clear, transparent and accountable? These are basic things, not about the policy—is it a good idea to do this or a bad idea to do that—but how has it been done. Removing the political element will make that committee much more effective; it can work together with all parties and work by consensus in the best-case scenario.

Madam CHAIR: I note that we are running short on time; we have exhausted our half an hour. I wanted to ask you a quick question to finish up. Are there any other matters or mechanisms that you would comment on where you think that the NT system of regulatory stewardship and review could be improved, while balancing resource constraints? Is there anything else you wanted to let us know about?

Prof NEUDORF: I think I have covered off my points in my written submission, but I am very open to learning more about the NT. I have been in Australia for about 10 years and I have not fully studied every jurisdiction in terms of its delegated legislation framework and the way it makes regulations. I am very open to learning more and I would be happy to contribute in the future if there are particular questions or you would like me to assist the committee in any way. I am always happy to do that, so it would be my pleasure to do that.

Madam CHAIR: Amazing—we really appreciate that offer. You will probably regret it at some point in time.

Thank you very much for your participation today. Thank you for putting in a personal submission. We really appreciate your expertise in this area; you obviously have a lot of knowledge in this space. I am pretty sure that if we need to, we will reach out again and see if we can utilise your skills in moving forward to make sure that we are doing what we can to get where we need to as a Territory. Thank you so much for your contribution; we appreciate it. Thank you for attending today. On behalf of the committee, farewell for now.

Prof NEUDORF: Thank you so much. Thank you, everyone, I really appreciate the invitation.

The committee suspended.

Stephen Argument

Madam CHAIR: Good afternoon, Mr Argument. We are the Legal and Constitutional Affairs Committee. My name is Laurie Zio; I am the Chair. Next to me is Oly Carlson, the Member for Wanguri. Down there is Dheran Young, the Member for Daly; and online we have Matthew Kerle, the Member for Blain. We appreciate your submission and for coming in today. I will run through the spiel that we have to do at the start of all our committee hearings.

On behalf of the committee, I welcome everybody to this public hearing of the inquiry into the review of historical regulations. I welcome via videoconference to give evidence to the committee Mr Stephen Argument.

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 apply. This is a public hearing and will be 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 as well. 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 to go into a closed session and take your evidence in private.

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

Mr ARGUMENT: My name is Stephen Argument, and I appear as a private citizen.

Madam CHAIR: Mr Argument, would you like to make an opening statement to the committee?

Mr ARGUMENT: Thank you, Chair. I have given this a lot of thought. One of the things I said to the committee secretary is that my relevant views are largely set out in the submission. I also have a problem with my voice, not assisted by the fact that I am on the tail end of a rather nasty cold, so I am not busting to give you a long dissertation by way of introduction.

One thing I wanted to say by introduction is that it did not occur to me until after I sent the submission that there was very much a Commonwealth focus in my submission based on my experiences in the Commonwealth. To enlarge on that, the reason I got interested in this subject matter in the 1980s and 1990s is that there was a time when the only forms of delegated legislation were regulations and, in the case of the territories, ordinances. In the 1980s and 1990s in the Commonwealth there was a proliferation, not only in terms of volume of delegated legislation, but in terms of the different names which it came under. There were less regulations and more things called notices, orders, declarations or any manner of different terms. It became my view that the proliferation of different types of delegated legislation was

aimed to try to avoid the categorisation as 'regulations' because regulations are unquestionably subject to scrutiny by parliament. It was my view that all these different creatures were developed in order to evade parliamentary scrutiny.

One of the things I was very happy about was the passage in the Commonwealth of the *Legislative Instruments Act* which, in simple terms, required that legislation was subject to parliamentary scrutiny based on what it did rather than what it was called.

The point of telling you all that is that in my submission I have talked a lot about a problem that probably does not exist in the Northern Territory. I apologise for wasting your time with that.

Madam CHAIR: That is okay, and I hope you feel better soon. Hopefully, we are not interrupting too much of your rest to try to get better.

Mr ARGUMENT: No, I am fine.

Madam CHAIR: I might lead off some of our questioning that we have. We have talked quite a lot about it with some of the different briefings we have had and with our previous participants today.

In your submission you suggest that a sunseting regime may be appropriate in the Northern Territory. We have an interesting demographic in the Territory in size and the way the Territory works. We have the same amount of legislation, but a very small number of staff to manage and look after that. In your view, what are the benefits and challenges of sunseting regimes, particularly in smaller jurisdictions? Are there any lessons that the committee could learn from the ACT's approach?

Mr ARGUMENT: You have identified another good point that I might have said by way of introduction. Obviously I have a 20-odd-year background in the ACT. The fact is it has not been my impression that it has ever been the same problem in the ACT in terms of delegated legislation being subject to the correct amount of parliamentary scrutiny. One of the things about the ACT, as I think I mentioned in my submission, is of course there is no sunseting in the ACT, yet we seem to manage quite well.

Madam CHAIR: Through their review processes?

Mr ARGUMENT: I have been thinking about this lately because it has come up in my committee meetings. One of the things is that there is a lot of legislation out there that is redundant because it has amended something or commenced something. One of the things that happens in the ACT—I do not know if it is the same in the Northern Territory—and they have had it for over 20 years, is automatic repeal of legislation that is amending once it has done its job. That keeps a certain amount of this stuff from the register that does not need to be there.

The other thing is—again, I have not given this a lot of thought until you asked the question—I also think that in the ACT they are quite good about reviewing legislation and repealing it when it does not do its job anymore. Having gone through the sunseting process in the Commonwealth, I can assure you that there was an enormous amount of volume of delegated legislation that ended up being repealed because it simply was not being used anymore.

I should also say that I think one of the benefits of having sunseting is that it puts delegated legislation under regular review to make sure that the legislation is still doing what it was expected to do, still meeting the need. That is a good thing.

Mrs CARLSON: This is probably more of a generic question overall. In your view, what practical steps could improve agency stewardship in reviewing regulations without requiring additional staffing?

Mr ARGUMENT: I think one of the problems with all this is that everything is going to require additional staffing. I am sorry I cannot give you a better answer than that.

Mrs CARLSON: That is a good answer.

Mr ARGUMENT: One thing I am conscious of is that—again, this is a fault in my submission—everything I have suggested about going down the line of the Commonwealth model is that it involves a lot of resources and a lot of extra staffing. Like you, I am generally operating in a small jurisdiction, and I appreciate that there is not so much capacity to put additional resourcing into it.

Mr YOUNG: In your submission you note that the ACT requires external documents that are incorporated by reference to be published on the legislation website as notifiable instruments. What is the purpose of this requirement and how does it improve the oversight?

Mr ARGUMENT: The value of it in terms of oversight is that if you have a piece of either primary or delegated legislation that relies on another document, not to give effect to it. The best example I can give you is that in the ACT there is a lot of primary and delegated legislation that refers to Australian and New Zealand standards for content. One of the things about that is in order to work out what your obligations are under the legislation, you have to go to these Australian and New Zealand standards to work out what the requirements and rules are.

I will end up contradicting myself in a second. People who use legislation are being forced to go to Australian and New Zealand standards, which you have to pay for, in order to work out what their obligations are. I think section 76 of the *Legislation Act*, or section 46 maybe—I cannot remember off the top of my head—attempts to force agencies that are relying on extrinsic material to publish extrinsic material on the website so that people have free access to the information they need in order to work out the contents of the legislation.

Does that help?

Mr KERLE: Thanks for coming, Stephen. Just before this I was watching a lecture you gave five years ago to get a feel for your presentation. Thank you for your jurisprudence.

In other jurisdictions there are specific legislative provisions that explicitly state that the repeal of amending regulations does not affect any amendment made by those regulations. It is a bit of a curly one. There appears to be no equivalent provision in the NT's *Interpretation Act*. Can you comment on any challenges associated with not having such a provision? Would you make a recommendation that the NT incorporate such a provision to make it clear that repeal of amending regulations does not affect the amendment put into the principal regulations?

Does that make sense?

Mr ARGUMENT: That makes sense. All I can say is that makes sense; it seems like a good idea. I am sorry. There is nothing else I could say.

Madam CHAIR: We appreciate your short, sharp responses.

Mr ARGUMENT: If I might add to that, one of the things I would say about provisions like that is without a provision like that you then have to rely on the common law of statutory interpretation and you have to wade through very technical books to try to come up with clever arguments to support whatever position you want to arrive at on that issue. It is always much clearer if the legal position is made clear in the legislation, so it is clear to everybody.

Madam CHAIR: Member for Blain, are you happy with that?

Mr KERLE: Very happy.

Madam CHAIR: I note we only have a few minutes left, but I will quickly summarise another question for you. In your submission you discussed the importance of classification of subordinate legislation to ensure appropriate oversight. I am wondering if you could explain the challenges that might occur in practice for this subordinate legislation that falls outside of strict classifications and how this might relate to oversight of historical subordinate legislation.

Mr ARGUMENT: Can I ask you a question first? Do you have the same issue in the Northern Territory of there being this wide variety of names on delegated legislation, or do you largely operate on the basis of just regulations?

Madam CHAIR: We have a few different pieces, but largely it is regulations.

Mr ARGUMENT: If it is largely regulations, I think it is less of a problem. I do not know how to answer your question other than to say that I like the test that was originally in the Commonwealth *Legislative Instruments Act*. My fundamental point is that legislation should be classified on the basis of what it does. One of the things that the *Legislative Instruments Act* introduced was that parliamentary scrutiny tabling a disallowance and so on had to be applied to anything that was legislative in effect. One of the things that that Act did was it set out a definition of 'legislative in effect' which I thought was quite effective. In summary, I advise you to look at a definition of 'legislative in effect', similar to what was in the *Legislative Instruments Act*.

Does that help?

Madam CHAIR: Yes, thank you so much.

In your submission you discussed the role of parliamentary committees in scrutinising subordinate legislation via a technical scrutiny lens. Are there any options for prompting ongoing technical or policy scrutiny of subordinate legislation that you can think of?

Mr ARGUMENT: I think the option is to have a robust scrutiny committee looking at all delegated legislation, as I believe you have.

As the committee knows, I have been writing a book about delegated legislation in Australia for 20 years. In the initial editions the chapters on the Northern Territory committee did not require much work in each revision because there was not much happening. It is my impression that in the last five years your legislative scrutiny process in the Territory has matured and developed. I think you are starting from a reasonable base, but I think you need to build on that base. Again, this is an argument that involves resources—and it is probably a self-serving argument, given I am one of these people—but I think it is helpful if you can engage an independent legal adviser to assist with the scrutiny process.

Madam CHAIR: Thank you; I appreciate that.

There are no other questions from the committee, Mr Argument, so thank you so much for your time today. We really appreciate you submitting your own submission to the committee. We thank you for coming on board today to be able to answer our questions.

Do you have anything else you would like to add before we finish?

Mr ARGUMENT: No, thank you. I wish you luck with what you are doing. It is bad for me in terms of rewriting my book, but one of the things that is really pleasing at the moment is that you are doing this inquiry and one of the New South Wales committees is doing a similar inquiry. As I said, it creates more work for me, but it is really good to see.

Madam CHAIR: We have already identified quite a few pieces of subordinate legislation that are no longer in use or anything that can be wiped away, so we hope that we get some good outcomes from this which eventually will reduce the administrative burden on our public service.

Thank you so much for attending today. We really appreciate it, and we hope you get better very soon.

Mr ARGUMENT: Thank you.

The committee suspended.

Department of Treasury and Finance

Madam CHAIR: On behalf of the committee, I welcome everyone to this public hearing of the inquiry into the review of historical regulations. My name is Laurie Zio; I am the Chair of the Legal and Constitutional Affairs Committee. We have online Matthew Kerle, Member for Blain; he is the Deputy Chair. Next to me is Oly Carlson, Member for Wanguri. Down the end we have Dheran Young, Member for Daly. Opposite I have Mr Mick Butler and Sarah Rummery.

Thank you for coming before the committee today. We appreciate you taking the time to speak to the committee and look forward to hearing from you. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and it will be webcast through the Assembly's website. A transcript will also be made for use of the committee and published 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 the committee to go into a closed session and we will take your evidence in private.

Could you please each state your name and the capacity in which you are appearing today.

Mr BUTLER: Mick Butler, Deputy Under Treasurer, Economics and Financial Management.

Ms RUMMERY: Sarah Rummery, Acting Deputy Under Treasurer, Revenue and Corporate.

Madam CHAIR: Would you like to make an opening statement today?

Mr BUTLER: No, other than to offer the apologies of the Under Treasurer, Tim McManus, who is Acting Secretary of Cabinet and is unable to be here today. We are just happy to take questions.

Madam CHAIR: No worries.

We know that the DTF is responsible for the regulation-making framework, which is the Northern Territory Government's primary mechanism for assessing and managing regulatory impacts and new and amending legislation. Could you please explain to the committee how the framework functions and what role DTF plays in guiding agencies to be good regulatory stewards under the framework?

Ms RUMMERY: The regulation-making framework actually was something that was first introduced in 2003. It was originally called the competition impact analysis. It was then replaced in the mid-2000s—I believe 2006, 2007. It came out of a COAG initiative, so it then became known as the regulation-making framework.

I suppose the principles really are to make sure that agencies who are looking to either introduce regulation, new legislation or amend legislation spend some time thinking about the problem they want to address, what the options are to address that particular problem—it might be that a non-regulatory response might be best—and essentially what is the minimum level of effort or imposition, looking at the relative costs and benefits of introducing new regulation and always looking at and making sure that whatever the costs of that regulation are that they are outweighed by the net benefit to the public and consumers. You are always looking at balancing the costs and benefits of any particular regulation and wanting to ensure there is a net positive benefit.

The framework in the Northern Territory at the moment involves the central agencies, so Treasury chairs the regulatory impact committee. There is a committee with Treasury; Attorney-General and justice; Chief Minister and Cabinet; and Department of Trade, Business and Asian Relations. There is a committee with the four agencies represented. When regulatory proposals are received through new policy development and proposals from agencies, they have to go through a review process. Treasury is the Chair of that committee and manages that review process.

The proposals are distributed to the committee for assessment, and each agency will provide their comments on what the regulation is seeking to achieve and what the costs and benefits of that proposal are, so there is a preliminary impact assessment and then a full impact assessment. There will be a certificate issued that will be attached to the Cabinet submission so that when a proposal goes to Cabinet, whether it is new legislation, amendment to legislation or regulations, Cabinet can be assured that it has been reviewed.

There are some proposals that are exempt—for example, tax legislation is generally exempt. I think that is the main exemption to the process.

That is the current regulation-making framework as it stands in the Northern Territory. I believe there is a review proposed to look at how it is functioning and whether it is achieving the desired outcome.

Madam CHAIR: Thank you; I appreciate that.

Talking about those impact statements, as a department do you think that they are effective in promoting consultation with stakeholders who might be impacted with statutory rules?

Ms RUMMERY: The agency who is proposing the new regulation, the legislative change or whatever it is, as part of their making the case there is a requirement for them to do that analysis, to weigh up who it is impacting and how it is impacting and what are the costs of that impact on stakeholders. That is part of the analysis that the agency is required to do.

As to its effectiveness ...

Mr BUTLER: It is not a formal requirement, as I understand it—the process for that stakeholder engagement process. Certainly, there would be situations where perhaps engagement ahead of regulatory-making actions might not be appropriate, but given the Cabinet submission process does have communications and engagement segments to it, I guess that would be identifying whether that has been undertaken. But in terms of making a requirement, it is more about identifying who is impacted and the level of impact and then make an assessment against the benefits under the proposal.

Madam CHAIR: Following on from that, some other jurisdictions make their impact statements public. We do not do that here in the Northern Territory, and some of the submitters who have provided submissions to us have made mention of that. Do you think there are any benefits or challenges in making these impact statements published?

Mr BUTLER: I think in all cases there are always benefits to government transparency in decision-making processes. Those jurisdictions that do publish them do provide for normal sensitivities of government decision-making processes, the ability to provide extracts or redact commercially sensitive material that may be in there, particularly if it has been through a stakeholder engagement process. Generally, that would be the way we would frame it and say there are certainly benefits to government transparency in decision-making and it would inform debate on legislation and regulation-making.

Ms RUMMERY: I would just add with the review that is currently underway, we can have that part of the assessment. I think it has been considered before because Treasury certainly are aware that other jurisdictions do publish those documents. We can look to have that as part of the current review.

Mrs CARLSON: Are there any other consultation processes or mechanisms used during the regulation drafting process—for example, publishing an exposure draft of the regulations? If so, could these mechanisms be used more frequently in the Northern Territory?

Mr BUTLER: Again, there is no requirement for the publishing of exposure drafts or other drafts of proposed regulatory changes. In situations where the new regulations, or regulations, have broad impacts or are particularly complex, then exposure drafts as a mechanism for stakeholder engagement can be useful. I think it would be an unnecessary burden to the process to make it a requirement for all regulation-making processes. It would be more about having guidelines around when exposure drafts may be useful. I think that is really an assessment on the necessity to engage on the regulations. Usually when you are dealing with an exposure draft it is not to consult on policy, generally speaking; it is about implementation of rulemaking, ensuring there are no unforeseen circumstances, minimising impacts on the stakeholders that are impacted and ensuring they are well understood, as opposed to being a method for debating policy decisions of government.

Ms RUMMERY: I would just add that is certainly something that Treasury has used that process when we have done consultation and introduced new legislation. With the *Petroleum Royalty Act* in 2023 and the *Mineral Royalties Act* in

2024 we had extensive consultation with stakeholder groups and we released exposure drafts. It is case by case, but it is something we have recognised added value in that situation.

Mr YOUNG: My question is about sunset clauses and the majority of Australian states having a 10-year period. What do you think the benefits and challenges of introducing a mandatory sunset regime in the NT would be?

Mr BUTLER: Introducing a regime of that nature would have to be carefully considered, particularly given it is not in general use across regulations at the moment. An introduction that then ensured that the entire regulation of government all came within that 10-year period would be problematic for agencies and government to deal with the logistics issue, so there would have to be some need to stagger or deal with existing regulations or look to a grandfathering of existing regulations with review, rather than introduction across the board.

They certainly do have benefits in requiring agencies, as the sunset date approaches, to review regulations to see if they are still necessary, contemporary and efficient, because obviously operationally the regulations disappear if they are not reviewed and renewed. The flipside of that is an additional administrative burden on government in terms of having to ensure that those regulations are reviewed.

Mr YOUNG: Like you just mentioned, there would be an administrative burden on DTF. Would you see any other burdens that would come across?

Mr BUTLER: I was more thinking holistically. Obviously, across all agencies they have legislation that is within their responsibility and under that legislation sits the range of regulations. The Department of Treasury and Finance does not have a particularly large portfolio of regulations under its legislation, but obviously in other agencies and ministerial portfolios there would be quite significant numbers of regulations, so that would be a greater burden for them.

Mr KERLE: The Administrative Arrangements Orders often shift portfolio responsibility for regulations between agencies. Can you comment on how this impacts on regulatory stewardship and agencies' capacity to ensure regulations are fit for purpose? For example, after the last election we saw a rather large MOG which meant there were a lot of agencies who were inheriting regulations they may not have had experience with before?

Mr BUTLER: Machinery-of-government changes that move regulations between agencies or newly created agencies have the potential to provide those agencies with the challenge of coming up to speed or becoming aware of what the regulations are. Generally speaking, if it is a result of a machinery-of-government change, normally the personnel with the requisite knowledge would move between those agencies. That is not to say it is the case always, but it is not as though agencies will pick these things up completely without understanding. I would suggest that, nonetheless, amongst many of the challenges that arise from machinery-of-government changes that is just one of the things that need to be kept on agencies' radar when they inherit new legislation.

Mrs CARLSON: Do agencies seek specialist advice from DTF in relation to fees or any other finance-related matters proposed by regulations? If yes, can you please provide the committee some more detail about how this works in practice when drafting regulations—for example, is this a formal process and who is involved?

Mr BUTLER: We have published the whole-of-government pricing framework which basically sets, I guess, the principles by which agencies should consider the manner in which they set fees and charges. That is basically looking at the type of services that are being provided by government, whether it is appropriate for full cost recovery or other mechanisms for doing it.

We also have in place a piece of legislation called the *Revenue Units Act* which allows agencies who set fees and charges to express them in revenue units. The effect of this is to ensure that those fees and charges will automatically, on an annual basis, move up in line with the Darwin CPI. It is basically to keep them inflation-neutral. That stops agencies having to review fees and charges for the process of dealing with inflation and general costs of goods and services going up.

They are the two main mechanisms through which we provide guidance on setting fees and charges. We make ourselves available to provide advice in terms of those frameworks.

Ms RUMMERY: To follow up on the revenue units, we issue a Treasury circular or a revenue circular, I believe, every year once that indexation has happened out to all agencies and their CFOs, so everyone knows that all their fees and charges have been indexed by what amount from 1 July each financial year.

Madam CHAIR: Following on from that, some jurisdictions enshrine in their legislation a requirement for government agencies to be good regulatory stewards. Do you think that we could introduce such a requirement here in the NT? Would it be beneficial if they put it in their legislation that they have to review?

Mr BUTLER: Being good regulatory stewards is best practice, I think agnostic as to whether that was in legislation or embedded in a process like the regulation-making framework. In either case agencies would be required to undertake it, so I think it is more about ensuring that the practice is enshrined, rather than the methodology by which that would happen.

Ms RUMMERY: I can provide an example where Treasury has done that. When we introduced the new *Petroleum Royalty Act* in 2023 we included a review to be completed within five years of the commencement of that Act, with the results of that review to be reported through to the Treasurer. I guess there is a mix of approaches already.

Madam CHAIR: In some other jurisdictions as well, OPC (Office of the Parliamentary Counsel) also provide the advice to departments around regulation review processes. Do you think that guidance material from OPC would assist a department like yours to be able to review all of your legislation and regulations?

Ms RUMMERY: It could not hurt. I think if OPC had that role or took that role to reach into departments and provide advice on that, it could only be helpful.

Madam CHAIR: Would it present any challenges if they did do that—on your processes that you already have in place—if they were to implement guidelines that contradict what you already do? Would that present challenges to your agency or are you pretty good with moving with them?

Mr BUTLER: As I understood the question, it was about providing guidance material on principles. That would be useful in terms of undertaking the processes that we need to do in being stewards of our regulation. I do not think that would get in the way of doing that. The more material that agencies have that provides them with information or guidance on how to undertake tasks, that is a useful thing.

Madam CHAIR: Are there any other questions on behalf of the committee? Matt, online?

Mr KERLE: No. That has been very productive; thank you.

Madam CHAIR: The only other thing that I wanted to touch on is: are there any other mechanisms or matters that you could comment on that you think the NT system, the stewardship framework, could be improved in its current form, while balancing some of our resource constraints that we have in the NT? Do you have any advice for us to provide when we do our recommendations?

Mrs CARLSON: Hot tips.

Mr BUTLER: No; I think the line of questioning has been pretty thorough in terms of examining the processes. I do not think we have anything to add in terms of a recommendation.

Madam CHAIR: All right; that is all we have today.

Thank you so much for coming in. We appreciate your time. We know that you are very busy people, and this time of year is very busy for you guys. Thank you very much for coming in and providing the advice to us. We will be compiling our reports with the assistance of the secretariat—thank you to the secretariat. Thank you for coming in today; we appreciate it.

The committee suspended.

Attorney-General's Department

Madam CHAIR: My name is Laurie Zio and I am the Chair of the Legal and Constitutional Affairs Committee. Online we have Matthew Kerle, who is the Deputy Chair and the Member for Blain. Next to me I have Oly Carlson who is the Member for Wanguri. At the end we have Dheran Young, the Member for Daly. Thank you for coming. We appreciate your time.

On behalf of the committee, I welcome everyone to this public hearing of the inquiry into the review of historical regulations. I welcome to the table to give evidence to the committee Ms Hannah Clee and Mr Douglas Burns. 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 to the committee apply. This is a public hearing and it is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you say should not be made public, you may ask the committee to go into a closed session and we will take your evidence in private.

Could you please each state your name and the capacity in which you are appearing today.

Ms CLEE: Hannan Clee. I am Acting Director of Legislation and Legal Policy for the Attorney-General's Department.

Mr BURNS: Doug Burns. I am Acting Deputy Director of Legislation and Legal Policy, Attorney-General's Department.

Madam CHAIR: Would you like to make an opening statement today?

Ms CLEE: I have prepared one. Thank you to the committee for the opportunity to appear today in relation to this review of historical regulations.

By way of opening, I will provide a bit of a snapshot of the Legislation and Legal Policy Unit (LLPU) and our functions in the Attorney-General's Department in relation to legislative reform. As indicated in the unit's name, the LLPU provides strategic legal and justice-related policy advice to government and this includes legislation reform. As such, the LLPU develops, reviews and implements legislative change, advises portfolio ministers and governments on policy, legal and justice measures and provides ministerial support.

The AGD currently administers approximately 165 Acts and associated delegated legislation. The LLPU provides a central role for the Attorney-General's Department in the implementation of legislative change and undertaking legislative reform process.

The LLPU's work covers defined areas of legal practice across this portfolio of legislation, looking at crime and criminal justice so that encapsulates legislation and legal issues relating to the Criminal Code, offences, penalties and sentencing. In this respect we also advise on offences and penalties across the NTG where other agencies undertake reforms that include offences or penalties. This is with a view to maintaining consistency of offences and penalties across the statute book. We also provide services to the Department of Corrections by way of a shared service agreement in relation to their legislative reforms which are also criminal justice related.

We also cover civil matters, so legislation and legal issues in relation to a wide range of civil matters which includes human rights, court procedures, domestic and family violence and anti-discrimination.

We also do public and commercial law, which is legislation and legal issues relating to information, privacy, land titles, the legal profession and tenancies.

We also cover any intergovernmental relations, supporting ministers on ministerial councils, such as the Standing Council of Attorneys-General, and we represent AGD at officer level on various working groups as well as provide legal advice for our intergovernmental and cross-agency working groups.

In addition to providing strategic legal advice that those Acts cover, LLPU also research, investigates and provides legal advice to government and government agencies on national and international legal matters affecting the Territory.

In terms of conducting legislative review across AGD, legislative review and reform occurs on a routine basis through operational interaction with portfolio legislation and through omnibus amendment Bills. The process serves to enable review through real-time operation of legislation, including through interaction with stakeholders, and to allow for adjustments where necessary. The review processes also occur through pursuing government's policy and legislative priorities.

Being the Northern Territory, we are a small jurisdiction, but we do pursue significant amounts of legislative reform. As such, we often look to legislative reform and practices in other jurisdictions for reference and adopt where appropriate to allow for the Northern Territory context.

We are also aware of the use of sunset clauses in some jurisdictions. As a review mechanism in the Northern Territory, sunset clauses are used where appropriate to the circumstances. If we were to go down the path of a mandated sunset clauses regime, it would require dedicated resources to be able to provide that ongoing monitoring of expiry dates and the remaking of regulations every few years.

Our experience is that the reform priorities of government are generally allocated to available resources and broader reviews allocated as resources permit. Our practice of maintaining a real-time operation of legislation review also allows for consideration of amendments that addresses dated regulations and allows us to update it where necessary.

It is also often through interaction with the Office of the Parliamentary Counsel, through drafting processes, that opportunities arrive. By way of example, recent amendments to consumer affairs and fair trading regulations provided an opportunity to remove references to repeal provisions and to tidy up as part of progressing government's reform priorities. We have quite a close working relationship with the Office of the Parliamentary Counsel through the drafting process, and this also assists in identifying areas for review and provides opportunities to make amendments while we progress government reform priorities.

I hope this provides some further context for the committee in considering your terms of reference.

Madam CHAIR: Thank you. I very much appreciate that; it was very informative.

In previous briefings and today we have talked about sunset clauses and the introduction of that into the Northern Territory. Other jurisdictions do have these regimes which automatically repeal subordinate legislation after five or 10 years. From the AGD's perspective, what are the benefits and challenges of implementing this in the Northern Territory and do you think it could be implemented?

Ms CLEE: I covered off that in my opening statement to some extent. The resourcing allocation is the biggest challenge for us. As noted, we are a small jurisdiction and we have a small team covering quite a broad portfolio of legislation. Our resources are primarily driving government's reform priorities, but we do keep in mind where we have—maintaining a bit of a regular review of legislation. To have a mandated sunset regime would present some challenges for the department in being able to have the resources available to maintain a rolling program.

Mr BURNS: I also note that there is a bit of a risk that stakeholders, particularly industry and things like that, get a bit nervous when there are limitations placed on things that allow them to actually function within their own parameters and things like that. The risk for them is if a regulation is about to expire, that creates the uncertainty going forward as to whether it will actually be continued or whether it is going to end. Also, that issue with whether government is actually able to respond in an appropriate time to ensure that continuity.

Madam CHAIR: Thank you. I appreciate that, and I appreciate that you did touch on it in your opening statement. My question to lead on from that is: if you were to take away the staffing and resourcing requirements that we would probably need to be able to do it, do you think sunset is the best practice to implement in relation to review processes?

Ms CLEE: I think through this process—and we have identified that most of our legislation, we do try to maintain a current statute book and through the process of undertaking operational reviews but also then incorporating tidy-ups and fix up as we go, I guess it is an alternative way of being able to maintain it without having necessarily sunset provisions. It is a different way of being able to maintain a currency of legislation.

Mr BURNS: Certainly from a best-practice position, in theory sunset clauses do provide a value in that they force that constant review. In practice, though, even if you had the resources around, what happens interstate is quite often those same regulations are just rolled over again and effectively rewritten and made again. In terms of having it as a step to actually force thorough review is not necessarily going to be there in practice.

The more practical approach is that ongoing monitoring of their use. Where something has not been used for quite a long time that is generally a trigger to say, 'Let us have a look at it'. Something we do when we do the statutory law revision Bills in conjunction with OPC is those things that have not been activated for a while or have been introduced an awfully long time ago, that automatically triggers those reviews to see whether they are still pertinent.

Mrs CARLSON: According to the legislation handbook, other agencies must seek advice from AGD in relation to legally contentious issues or offence provisions when preparing legislation proposals. Can you please provide the committee some more detail about how this works in practice when drafting regulations? For example, if this is a formal process, who is actually involved in that process?

Ms CLEE: We were just discussing a very instance of that occurring today. Generally, it starts out as an informal process where we might get call from another agency where they will just have questions and we are able to then give them some initial thoughts or suggestions about how they might go about approaching it before referring them to any formal seeking legal advice if necessary or what other processes they may need to undertake. It is usually by just direct contact with our area and talking through what it is that they are trying to achieve and what it is that they are faced with.

Mrs CARLSON: The Administrative Arrangements Orders often shift portfolio responsibility for regulations between agencies.

Madam CHAIR: Especially after whole of government ...

Mrs CARLSON: Whole-of-government MOG changes. How does this impact regulatory stewardship and agencies' capacity to ensure regulations are fit for purpose?

Ms CLEE: Do you mean in terms of where there has been the machinery of government and we have had areas move?

Mrs CARLSON: Yes.

Ms CLEE: Usually through those processes, but I guess it can be case by case, depending on how an agency is structured in terms of managing its legislation. It does often mean that there is that sort of forcing to have a look at something, particularly in determining where legislation might sit and what is required to be able to administer the legislation and the associated regulations. In terms of the machinery-of-government processes, it is ...

Madam CHAIR: Can I just add, we spoke to the Department of Treasury and Finance about this before. One of the comments they made on this particular line of questioning was that sometimes when you do machinery of government, if the AAOs change agency, sometimes the staff member with the knowledge and the key expert advice goes with that to the new agency so that they have the ability to be able to keep working in that space as it changes. Is that what you have seen as well?

Ms CLEE: Yes. As I was saying in terms of how it is structured initially before the change as to who has—if you have an agency that has more of a central approach, then the split would be quite challenging if you have staff who move

and who have knowledge of particular Acts. It really depends on how an agency is structured internally, but it can present challenges with the knowledge.

Mr YOUNG: In some other jurisdictions OPC publish guidance for agencies on regulation review processes. Would guidance material—for example, templates or checklists—from OPC on agency review processes assist AGD in reviewing those regulations?

Ms CLEE: From an AGD perspective, because we do it quite a lot—we have a very large legislative reform program so it is not so much necessarily Attorney-General's Department, but it is certainly for other agencies who may not have that same exposure to the processes. It would certainly be beneficial to have more guidelines around the processes that are required and how to go about the legislative review process.

Mr YOUNG: You kind of touched on it, but are there any challenges that may present?

Ms CLEE: How do you mean; sorry?

Mr YOUNG: If they were to go ahead with the guidance for agencies on regulatory review processes being put in place, what challenges would that present?

Ms CLEE: It would depend on what they looked like. We are aware that some other jurisdictions have guidance materials. If it was more as a guide and not too prescriptive—it depends on the particular issue at play as to how you may go about undertaking a review. If you have a very prescriptive process, that can limit what you might be able to achieve with it. Having more in terms of a guide allows more flexibility to be able to respond appropriately.

Mr BURNS: There is also a bit of give and take there too. Presently, things like the legislation handbook sort of directs agencies on the processes to reach out to us, as well as OPC, to have those initially informal conversations that will then turn into more formal things and provides that avenue of awareness for OPC as to what might be coming through the pipeline and to help guide that along the way, as opposed to something that is a more formative framework that an agency will conduct on its own without that input—especially for our busy legislative program and the limited size of resources that we have—might create some issues along the way there, as opposed to having that informal relationship where we can guide things along and get that process happening.

Mr KERLE: I have a quick question about parliamentary review. Under the PSEMA (*Public Sector Employment and Management Act 1993*) the agency CEO must report annually to the Legislative Assembly on any legislation administered by the Assembly. How do you find this works in practice? Does it assist with the structured review of subordinate legislation?

Ms CLEE: I will take that one on notice, if that is okay?

Mr KERLE: Yes.

Madam CHAIR: Matt, we will just get you to restate that question for the record.

Mr KERLE: For the record, under the PSEMA (*Public Sector Employment and Management Act 1993*) the agency CEO must report annually to the Legislative Assembly on the legislation administered by the agency. How does this work in practice? Does it assist with the structured review of subordinate legislation?

Madam CHAIR: The AGD has the largest portfolio of subordinate legislation. I know you have several historical regulations that date back prior to 1990. The committee understands that there are two historical regulations that are currently under review by AGD. Could you advise which regulations are under review? On average, how long does it take for you to review historical regulations?

Ms CLEE: It is on a case-by-case basis in terms of time. It depends on the size of the regulations and where it may be in need of review. I need a moment to check which ...

Madam CHAIR: Take your time.

Ms CLEE: To clarify, are you referring to the national scheme, like with the classifications? I am excluding that one because any—just for your records, where we have the national laws applying uniform legislation or have (inaudible) schemes and the like, we are guided by where national reforms are going on to undertake review of those regulations so that we do not come out of step.

There is ongoing work in relation to Return to Work Regulations. Again, that is tied into a national scheme. It underpins the rehabilitation and workers' compensation scheme. With that one we work closely with WorkSafe who administer those regulations. We are informed by them at the time when they need to progress regulations. They manage the review process for that.

The other one is the Absconding Debtors Regulations. They are quite out of date. There have not been any changes made to that since 1980. They are rarely used. We need to have a look at those ones. Through this process we have undertaken to do that. I cannot give a timeframe at this point.

Madam CHAIR: That is okay. When you are doing your planning for a year or two in advance, or whatever, is there a generic timeframe that you would give to allow for these reviews, or it really is based on the legislation and the changes that are needed—you do a review of what you need first before you determine how long it will take?

Ms CLEE: It also depends on the legislation priorities of government. While we may have a working program in terms of reviewing legislation more broadly and regulations, if there are changing priorities and the like that often will get put aside so that we can progress government priorities.

Madam CHAIR: Thank you; I appreciate your response.

How do you incorporate public consultation into your reviews?

Ms CLEE: There are a number of different ways that we progress public consultation. It again depends on the nature of the review, but this can be through discussion papers. It may also be through working groups with stakeholders involved. Other processes may involve getting feedback from stakeholders where they identify particular issues and we undertake to have a look at those issues. It really depends on the particular matter that is being looked at and where the government's priority is and where there may be consultation. There are different processes. For example, the Rights of the Terminally Ill Bill obviously had a process through the committee and with obtaining a report. That has informed—so the consultation was undertaken through a different process in that way.

Mr BURNS: It is also worth noting, particularly in the small jurisdiction that we are, stakeholders are not shy about coming forward, reaching out to us and expressing if they have issues with things as well. There is that feedback with us.

Madam CHAIR: In your experience, given that you have such a big portfolio of coverage of legislative reform and changes, what practical steps could agencies take to make sure that their stewardship and review process is up to speed? Do you have any advice in our recommendations that we might put in our report, other than additional staffing? Is there anything that agencies can do to improve that process?

Ms CLEE: We have a practice of maintaining a bit of the register, at least, of things as we identify them; as Doug mentioned, where stakeholders have contacted us—that can be both internal and external stakeholders—and in administering the legislation something will be raised. We maintain a list of matters. Keeping track of things as they arise then gives you a starting point to take a review forward.

Madam CHAIR: I do not think the committee has any other questions. Is there anything else you would like to add before we say goodbye? Is there anything else you wanted to let us know about?

We really appreciate your time today. We know everybody is busy, so thank you for your time, expertise and the information you have provided. We really appreciate it. It will help us in generating our report and recommendations to government. Thank you.

The committee suspended.

Office of the Parliamentary Counsel

Madam CHAIR: On behalf of the committee, I welcome you to this public hearing of the inquiry into the review of historical regulations.

I welcome to the table to give evidence to the committee today, Ms Jessica Black. Thank you for coming before the committee. We appreciate you taking the time to speak with the committee, and we look forward to hearing from you. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing 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 the committee to go into a closed session and we will take your evidence in private.

Could you please each state your name and the capacity in which you are appearing today.

Ms BLACK: My name is Jessica Black. I am Acting Chief Parliamentary Counsel.

Madam CHAIR: Ms Black, would you like to make an opening statement?

Ms BLACK: I will briefly explain what our team does. Office of the Parliamentary Counsel, often referred to as OPC, provides legislation drafting services to government and to members of the Legislative Assembly and we publish the laws of the Northern Territory and the *Government Gazette* on the legislation website. We are public servants who are a part of the Department of the Chief Minister and Cabinet. Our team comprises seven legislative drafters, all of whom are practising lawyers, and we have three legislation quality and access officers who undertake proofreading, quality assurance and publishing functions.

Broadly speaking, we are responsible for drafting three categories of legislation: Bills, draft laws introduced into the Assembly which, once made, become Acts of the Northern Territory; subordinate legislation, including regulations; and statutory instruments.

As you will be aware from our previous private briefing, there are roughly 300 pieces of subordinate legislation currently in force in the Northern Territory. The vast majority of those are regulations, but there are also other types of subordinate legislation, such as by-laws and rules, that are outside the scope of your inquiry.

Madam CHAIR: Thank you very much; I appreciate that.

In some other jurisdictions, OPC does publish guidance for agencies and regulation review processes. Do you think that this practice would work in the NT, and would it impose any significant resource burden on OPC?

Ms BLACK: In the long term, I suspect no. In the short term we would need to do some work to undertake some research and develop some materials. Yes, over the long term I think it actually could assist us and agencies in having review processes for subordinate legislation (regulations) proceed in a hopefully more efficient and more timely manner. Long term I think it would actually be a significant benefit to us.

Madam CHAIR: Following on from that, we know that in other jurisdictions OPC has a statutory obligation to notify agencies of changes that need to happen in the repeal of regulations. Do you think something like that could also take effect in the Northern Territory?

Ms BLACK: The situation in the Northern Territory is a bit different from a number of other jurisdictions. In several Australian jurisdictions, the OPC equivalent is established by statute and, accordingly, they have specific statutory functions and powers that include things such as notifying agencies of regulations that are, for sunset regimes, scheduled for expiry. As I mentioned at the beginning, we have no statutory basis, so we do not currently perform those functions.

I suppose there is a possibility for us to do that work. The thing that I would point out, though, is that we work in an almost completely manual system, so we do not have any way of automating a process for notification or similar to agencies like some other jurisdictions do. There would be a fair bit of work without some new systems being developed and made available—quite a bit of work involved in doing that. In one sense we may not be better positioned to do that than an agency would be to look after their own legislation for which they are responsible.

Madam CHAIR: I have a question in relation to that to get your thoughts on moving forward, futurising processes and stuff like that. We have had a submission and a person appear today who talked to us a little bit about AI and the use of AI in relation to these processes. Obviously, there are some issues that would need to be managed in relation to privacy and confidentiality and all that kind of stuff if you were to implement those kinds of processes. Do you think and have you seen or been advised or talked about across the different probably partnerships that you have nationally, or internationally maybe—has the use of AI been implemented anywhere else to support this kind of process and help with the administrative burden? Do you think that is something we could look at here in the Northern Territory?

Ms BLACK: I will start by talking about the things that we are talking about in our community of drafters across Australia.

Madam CHAIR: I knew there would be one.

Ms BLACK: There absolutely is.

We meet regularly with our interstate and international counterparts and the adoption of new technologies, including AI, is something that we are very interested in because I think, particularly in a small jurisdiction, there are a lot of benefits to being able to use new technologies to make the way we work a lot more efficient. I know that in other jurisdictions they are carrying out a lot of trials and looking at opportunities to develop technology to assist in the drafting and publishing space and in other related spaces as well. That work is happening.

Last year the Northern Territory hosted a forum of drafting officers from around Australia and overseas to look at IT systems for publishing and drafting legislation. We are very interested in all those things.

I think I read the submission that you are referring to, though unfortunately I missed hearing the person speak due to other commitments earlier today.

Yes, it does bring great opportunities, but it is difficult in a small jurisdiction to experiment in these sorts of areas because the development of such systems requires a lot of resourcing in terms of getting the expertise and the time

and the money involved to develop those systems, experiment with them and see if they work. Although we would love to be able to do that, it is very difficult for a small jurisdiction. In that sense we are looking very closely at what our interstate and international counterparts are doing to see if we can ...

Madam CHAIR: Feedback.

Ms BLACK: Yes, I suppose, for want of a better word, but look at the lessons and the learnings that they have had and look at whether we can adopt similar things up here.

Madam CHAIR: Thank you for that response. I feel like it kind of went down the legislative drafting and the regulations and stuff. What about the administrative side? If you were talking about help in managing timeframes and review processes and all that sort of stuff, has that been a topic and not just the legislation?

Ms BLACK: I cannot recall off the top of my head, but I think certainly reducing administrative burden in that space is something that we would be very interested in because of the benefits that would flow through to us. While it is not something that I have turned my mind to too much, I imagine that there is work happening in that space.

Mrs CARLSON: The statute law revision Bills are a mechanism to assist with tidying up statute books. How often are the statute law revision Bills used in the NT, and what is the process for drafting them? Could statute law revision Bills assist with repealing and amending outdated and unused regulations identified during the course of the committee's inquiry?

Ms BLACK: This is a good question. I will give you as much information as I can.

We prepare a statute law revision Bill periodically, working with our colleagues in the Attorney-General's Department. There is no set period for doing those Bills; it depends very much on the priorities of the government. Ideally, every couple of years or so—certainly our office would like to do one because over time little things pop up that you want to fix and they are not significant enough to warrant having a standalone Bill.

There are a few aspects to it. OPC keeps a list of things that require amendment, and we are updating that all the time. We have an officer in our team who is the steward of that list and is responsible for keeping an eye on it. We look at opportunities to implement those minor changes outside of a statute law revision Bill. For example, a small error is identified in a piece of legislation. We put it on the list and if in the future there is an opportunity to fix that problem through another Act or another set of amending regulations, we will try to incorporate that in there. We are always looking at that list to see what we can tidy up as we go along with our ordinary business.

When it comes to statute law revision Bills, the Attorney-General's Department instructs us on that project. We bring to it those items that we have identified and then AGD work with agencies across government in an effort to—they want to ask them to identify anything that needs to be fixed up, and then the instructions are provided to us.

It happens, as I said, every couple of years usually. It is quite a large undertaking. It is very fiddly and there are lots of little bits and pieces that form part of it, but it is important work and needs to happen.

To answer the second part of your question, that is a legislative vehicle that could be used to tidy up historic legislations that are out of date. It is a slightly unusual practice we have here in the Northern Territory where we use an Act to amend regulations, but we do it fairly regularly. Yes, that could be used to, for example, repeal regulations that are no longer needed. It could also be used to make minor amendments to things that need to be updated.

It could not be used to make amendments that are more significant. Those things would need to be done in a different way by a set of amending regulations to make significant changes to regulations or just a set of regulations that repeals an old set and replaces them.

Mrs CARLSON: In the course of its inquiry this committee considered some historical regulations that incorporate external documents by reference as in force from time to time. The *Interpretation Act* currently provides for regulations to incorporate materials in this manner if there is authority to do so in their enabling Act. What safeguards should be put in place to ensure there is robust screening and transparency of incorporated documents?

Ms BLACK: I am not sure I can really answer that question. Once an Act provides for the incorporation of a document as in force from time to time, as far as I know—other than I suppose when it has been done by subordinate legislation, like regulations. The adoption of such a document as in force from time to time would be considered by your committee, I suppose, as part of their normal scrutiny process. After that, there is no mechanism to look again at the document that has been incorporated.

The *Interpretation Act*, as the general starting point, allows for external documents to be incorporated with a static reference, so as in force on a particular date or the date when the subordinate legislation is made. If there needs to be an ability to incorporate a document as in force from time to time, the Act needs to specifically say so. That is the point at which the scrutiny of that policy decision, I suppose, needs to be had by the Assembly when they are considering the Bill—whether they consider that is appropriate.

Mr YOUNG: Some other jurisdictions have sunseting regimes in place that automatically repeal subordinate legislation, from five to 10 years. What implications would such a sunseting regime have on OPC?

Ms BLACK: That would have a huge resourcing implication for our office. I mentioned earlier that there are 300 pieces of subordinate legislation on the statute book at the moment. I suggest that hundreds—more than 200 of those probably—have been made more than 10 years ago. Certainly in an initial stage that would be challenging for us, as well as for agencies. I do not know how we would ever be able to resource that. Honestly, I just do not think there are enough people out there to do that work even if we could employ all of them. It would be very difficult.

The other thing about sunseting regimes is on the one hand, there is a large benefit in forcing agencies to review their subordinate legislation periodically to make sure that it fit for purpose, it is still achieving its objectives, it is contemporary—all of those things; on the other hand, it is a blunt instrument. Some pieces of subordinate legislation have very little community impact and are rarely used. Having to carry out a review and remake that every 10 years—there is a balancing here of what needs to happen. I do not know that it would be there for a number of pieces of subordinate legislation.

The other thing not directly related to OPC is that I think there would also be quite a significant burden on stakeholders as well because if your regulatory regime that you work in is being reviewed and remade every 10 years, there are definitely some benefits, but I am wondering also if there might be some downsides as well in that things might be changing quite a lot and there might be some impact for stakeholders as well that we maybe have not considered. It is a bit out of my wheelhouse.

Mr YOUNG: Thank you for that.

Other jurisdictions require explanatory statements to be prepared for subordinate legislation that is then tabled in the parliament. What would be the benefits or challenges associated with a similar requirement in the Northern Territory?

Ms BLACK: I should start by saying that OPC does not prepare explanatory statements, so it would not have a significant impact on us at all. Our involvement with explanatory statements for Bills is that we review those documents prepared by agencies. It is a really useful process for us and the agency to make sure at that final stage in the preparation of a piece of legislation that everyone is on the same page about what it does. It is very valuable for us.

There is no particular impact on us, but I think as a general point there may be some benefit in having those for subordinate legislation, the primary reason being that extrinsic materials, including explanatory statements, are often used to interpret the meaning of legislation where there is some kind of ambiguity or similar. That might be useful in terms of access to law and the public being able to understand what the law does. There may be some benefit for it.

Mr KERLE: Sorry, Jess; this is a bit of a wonky question. In other jurisdictions there are legislative provisions that explicitly state that the repeal of amending regulations does not affect any amendment made by those regulations. There appears to be no equivalent provision in the NT's *Interpretation Act*. Do you think that the NT should incorporate a provision to make it clear that the repeal of amending regulations does not affect the amendment put into the principal regulations?

Ms BLACK: It is not a wonky question; I understand exactly what you mean.

I do not have the *Interpretation Act* in front of me. This has been raised in the past couple of weeks. We have a drafting practice of providing for automatic repeal of amending legislation once it is spent, so once it has operated to make the relevant amendments it is repealed. Other jurisdictions do provide for this in different ways. I am not sure of the circumstances in which that practice was adopted here in the Northern Territory. Our office has always taken the view that the automatic repeal does not affect the ability of the disallowance process to carry on.

I suppose what this inquiry has brought to light, just in terms of the questions that have been asked of me, is that there are people who do not necessarily agree with our view or find it a bit unclear. All I can say is that we would be open to having some discussions with those people and looking at adopting a different process that could involve amending the *Interpretation Act* or similar to make that clearer.

Madam CHAIR: We thank you very much for coming. We note that you also attended a briefing earlier. You probably have doubled up on a couple of questions that we asked at the briefing and then asked again today. We do not always understand the processes that you go through, so it is good to hear it twice. We thank you for coming today and providing us with the advice that you have. We hope you have a good day; thank you.

The committee concluded.
