



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Interpretation
Legislation Amendment Bill 2018**

October 2018

Contents

Chair’s Preface	4
Committee Members	5
Committee Secretariat	6
Terms of Reference	7
Recommendations	9
1 Introduction	10
Introduction of the Bill	10
Conduct of the Inquiry	10
Outcome of Committee’s Consideration	10
Report Structure	11
2 Provisions of the Bill.....	12
Purpose and Overview of the Bill	12
3 Examination of the Bill.....	13
Introduction.....	13
Definition of ‘business day’	13
Appendix 1: Submissions Received.....	15
Appendix 2: Public Briefing.....	16
Bibliography.....	17

Chair's Preface

This report details the Committee's findings regarding its examination of the Interpretation Legislation Amendment Bill 2018. Based on issues identified by the Office of Parliamentary Counsel, the Bill seeks to clarify and simplify some of the underlying provisions in the *Interpretation Act* regarding the operation of legislation in the Northern Territory. In addition to amending the *Interpretation Act*, the Bill also amends the *Sentencing Act* and repeals the *Amendments Incorporation Act*.

The Committee has recommended that the Assembly pass the Bill with the proposed amendment set out in recommendation two. This amendment seeks to ensure that the definition of 'business day' is unambiguous and drafted in a sufficiently clear and precise way, and does not result in confusion or unintended consequences in instances where public holidays do not occur on the same day across the Northern Territory.






On behalf of the Committee, I would like to thank the Northern Territory Legal Aid Commission for its submission to the Committee's inquiry and the Department of the Attorney-General and Justice for briefing the Committee. I would also like to thank Committee members for their support in the examination of the Bill.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
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	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
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	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	Deputy Chair:	Social Policy Scrutiny
	Mrs Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
	Committee Membership	
	Standing:	Public Accounts, Privileges
	Sessional:	Social Policy Scrutiny
	Ms Sandra Nelson MLA Member for Katherine	
	Party:	Territory Labor
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	Standing:	House
	Sessional:	Social Policy Scrutiny
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	Committee Membership	
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public briefing.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Interpretation Legislation Amendment Bill 2018 with the proposed amendment set out in Recommendation 2.

Recommendation 2

The Committee recommends that the definition of 'business day' be amended to clarify its operation in instances where public holidays do not occur on the same day across the Northern Territory.

1 Introduction

Introduction of the Bill

1.1 The Interpretation Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 15 August 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 27 November 2018.¹

Conduct of the Inquiry

- 1.2 On 17 August 2018 the Committee called for submissions by 19 September 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 2, the Committee received one submission to its inquiry which supported the Bill. The Committee held a public briefing with the Department of the Attorney-General and Justice on 10 September 2018.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendment as set out in Recommendation 2.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Interpretation Legislation Amendment Bill 2018 with the proposed amendment set out in Recommendation 2.

¹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Parliamentary Record, Debates Day 2 – Wednesday 15 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300579>, pp.3-6

Report Structure

- 1.6 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

2 Provisions of the Bill

Purpose and Overview of the Bill

2.1 In presenting the Bill, the Attorney-General and Minister for Justice noted that the primary purpose of the Interpretation Legislation Amendment Bill 2018 was to:

clarify and simplify some of the underlying provisions in the *Interpretation Act* relating to the operation of legislation in the Northern Territory. Most of the amendments are based on issues identified by the Office of the Parliamentary Counsel in the course of dealing with the practicalities of drafting, implementation and administration of legislation.²

2.2 In addition to amending the *Interpretation Act*, the Bill also amends the *Sentencing Act* and repeals the *Amendments Incorporation Act*.³ As highlighted in the Explanatory Statement, the proposed amendments seek to:

- 1) clarify section 8 of the Act regarding the kinds of actions and decisions that can be made under legislation before it commences operation as provided for in section 6 and under section 8 of the Northern Territory (*Self Government*) Act 1978 (Cwlth);
- 2) provide for the inclusion in sections 17 and 18A of new definitions or revision of the definitions of terms commonly used across the statute book;
- 3) clarify section 28 regarding when a period of time mentioned in legislation ends;
- 4) repeal sections 38D (Alternate penalties), 38DA (Fine in addition to or instead of imprisonment) and 38DB (Body corporate fines under penalty provision) and re-enact these provisions in the *Sentencing Act*;
- 5) clarify the operation of sections 44 (Acting appointment) and 46 (Power to authorise another person to exercise power or perform function);
- 6) provide for technology neutral terms for the holding of meetings as dealt with in section 48A;
- 7) provide for the continued use in the citation of Acts of the year of enactment of an Act following amendments;
- 8) extend the operation of section 69 (Civil proceedings) to tribunals as well as courts;
- 9) repeal the Amendments Incorporation Act and re-enact relevant provisions in the *Interpretation Act*.⁴

² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Parliamentary Record, Debates Day 2 – Wednesday 15 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300579>, p.3

³ Explanatory Statement and Statement of Compatibility with Human Rights, *Interpretation Legislation Amendment Bill 2018 (Serial 58)*, <https://parliament.nt.gov.au/committees/spsc/58-2018>

⁴ Explanatory Statement and Statement of Compatibility with Human Rights, *Interpretation Legislation Amendment Bill 2018 (Serial 58)*, <https://parliament.nt.gov.au/committees/spsc/58-2018>

3 Examination of the Bill

Introduction

3.1 As noted previously, the Committee received one submission to its inquiry from the Northern Territory Legal Aid Commission (NTLAC) which supported passage of the Bill as drafted. NTLAC expressed the view that the Bill did not raise any concerns regarding the rights and liberties of individuals and, in particular, noted that the proposed amendments to the *Sentencing Act*:

consolidate and clarify the current provisions which are inconveniently and confusingly distributed between the *Interpretation Act* and the *Sentencing Act*.⁵

3.2 However, as discussed below, a potential issue of concern was identified during the Committee's public briefing on the Bill with the Department of the Attorney-General and Justice.

Definition of 'business day'

3.3 The Bill introduces a definition of 'business day' under section 17 as follows:

business day means a day other than:

- a) a Saturday or Sunday; or
- b) a day that is a public holiday in the place concerned (other than a public holiday that is part of a day).

3.4 Given that Show Day occurs on a different day in each of the Territory's regional centres, concern was raised that the wording of subsection (b) could potentially lead to confusion as to the operation of the definition. For example, if a person in Tennant Creek lodges an application in Darwin and it is a public holiday in one or the other place, it is unclear which location is considered to be 'the place concerned'.⁶

3.5 Moreover, the manner in which this phrase is interpreted could have ramifications when determining whether something was lodged, or a notice was served, within the prescribed number of business days as provided for under the relevant legislation.⁷

3.6 The Committee notes that the ACT is the only other jurisdiction where equivalent legislation incorporates a definition of 'business day'.⁸ However, in the absence of any regionally based public holidays, the issue highlighted above does not arise.

Committee's Comments

3.7 The Committee is of the view that further consideration should be given to the definition of 'business' day to ensure that it is unambiguous and drafted in a sufficiently clear and precise way, and does not result in confusion or unintended

⁵ Northern Territory Legal Aid Commission, Submission No. 1, p.1

⁶ Committee Transcript, 10 September 2018, p.3

⁷ Committee Transcript, 10 September 2018, p.3

⁸ *Legislation Act 2001 (ACT)*, Dictionary, Part 1

consequences in instances where public holidays do not occur on the same day across the Territory.

Recommendation 2

The Committee recommends that the definition of ‘business day’ be amended to clarify its operation in instances where public holidays do not occur on the same day across the Northern Territory.

Appendix 1: Submissions Received

Submissions Received

1. Northern Territory Legal Aid Commission

Note

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/58-2018>

Appendix 2: Public Briefing

Public Briefing – 10 September 2018

Department of the Attorney-General and Justice

- Caroline Heske: Senior Policy Lawyer

Note

Copies of briefing transcripts and tabled papers are available at:

<https://parliament.nt.gov.au/committees/spsc/58-2018>

Bibliography

Amendments Incorporation Act (NT)

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