National Disability Insurance Scheme (Worker Clearance) Bill 2019

Criminal Intelligence and Classified Information.

1. The *Serious Crime Control Act 2009* provides a detailed definition of 'criminal intelligence' in section 6 and defines 'classified information' as 'information the Commissioner classifies as criminal intelligence.' However, the Bill defines 'criminal intelligence' as 'information that the Commissioner of Police classifies as criminal intelligence under the *Serious Crime Control Act 2009.'*

    Consequently, the term 'criminal intelligence' would have a different meaning under the two different Acts and what is referred to as 'criminal intelligence' under the National Disability Insurance Scheme (Workers Clearance) Act would be referred to as 'classified information' under the *Serious Crime Control Act.*

    The Bill then attempts to provide a similar scheme to the handling of criminal intelligence to that in the *Serious Crime Control Act* in clause 44, resulting in consequences that:

    - Under clause 44(2) and (3), the Northern Territory Administrative Tribunal (NTCAT) will not need to consider the content of classified information to determine whether it is criminal intelligence but merely whether it is information that the Commissioner of Police has so classified.

    - Clause 44(5) then provides that 'classified information' also means 'information the Commissioner of Police classifies as criminal intelligence under the *Serious Crime Control Act 2009.'*

    - Because the definition of 'classified information' mirrors that of 'criminal intelligence', it is logically impossible for NTCAT to consider classified information to not be criminal intelligence under clause 44(2) and (3).

    a. *Why has 'criminal intelligence' been given a different definition to that in the Serious Crime Control Act?*

    b. *Given the differing definitions, why does the Bill attempt to apply the scheme in s 73 of the Serious Crime Control Act to the NTCAT using the terminology of that Act rather than that proposed in the Bill?*

Response:

Definition of Criminal Intelligence

a) This was an unintended consequence of drafting. The definition was amended in the draft to be consistent with wording that was used in the Firearms Legislation Amendment Bill 2019.

b) The intention of the National Disability Insurance Scheme (Worker Clearance) 2019 Bill (the Bill) was for the definition of criminal intelligence to align with the definition in the *Serious Crimes Control Act 2009* (the Act). This is why the Bill applies the scheme from s 73 of the Act to the NT Civil and Administrative Tribunal (NTCAT) appeals. We agree with the Scrutiny Committee that an interpretation issue is created by the current definition. Noting the interpretation issue, it would be appropriate for the definition in the Bill to be amended to align with the Act definition (either by including an identical definition or by defining criminal intelligence by reference to s 6 of the Act).