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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Interpretation Legislation Amendment Bill 2018

10.00 am, Monday, 10 September 2018

Litchfield Room, Level 3, Parliament House, Darwin

Members:

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

Witnesses:

Caroline Heske: Senior Policy Lawyer, Department of the Attorney-General and Justice

INTERPRETATION LEGISLATION AMENDMENT BILL 2018

DEPARTMENT OF ATTORNEY-GENERAL AND JUSTICE

Madam CHAIR: Good morning, everyone. I am Ngaree Ah Kit. I am the Member for Karama and the Chair of the Social Policy Scrutiny Committee.

On behalf of the committee, I welcome everyone to this public hearing into the Interpretation Legislation Amendment Bill 2018. I acknowledge that today's public hearing is being held on the land of the Larrakia people and I pay my respect to Larrakia elders, past, present and emerging.

I also acknowledge my fellow committee members in attendance today: Robyn Lambley, Member for Araluen and Sandra Nelson, Member for Katherine via teleconference.

At this time I request that all mobile phones be switched to silent.

I welcome to the table to give evidence to the committee Ms Caroline Heske, Senior Policy Officer in the Department of the Attorney-General and Justice. 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 briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, 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 hear your evidence in private.

I will ask you to state your name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Can you please state your name and the capacity in which you are appearing?

Ms HESKE: My name is Caroline Heske. I am a senior policy lawyer with the Department of Attorney-General and Justice. I sit in their legal policy area and I am here to assist the committee with any questions it might have about how the legislation operates.

Madam CHAIR: Excellent. Thank you very much. Would you like to make an opening statement?

Ms HESKE: I would, just briefly. I have some familiarity with this bill but have not been instrumental through its development. The officer who is primarily in charge of this bill has a family situation and has had to go interstate. If there are questions I am not sure of the answer to, maybe I can take them on notice and get back to you.

The bill has also been developed extensively with the Office of Parliamentary Counsel, in particular the parliamentary counsel himself. He is also unavailable due to work commitments. Please bear with me if I am not sure of some of the answers at this stage.

Madam CHAIR: Thank you very much. I will now invite committee members to ask any questions they may have.

Mrs LAMBLEY: I do not know anything about the bill, so perhaps if you can give a little overview?

Ms HESKE: Sure. This bill amends the *Interpretation Act*, and there are some consequential amendments of other acts. The function of the *Interpretation Act* is a list of rules for interpreting other acts in the Northern Territory. It has a lot of technical rules about things like how you calculate time periods. If an act says 30 days, when does that start and end? Some of the older acts might refer to 'he'. There are provisions in this—and this is one of the ones I will come to because it is being amended—that also means it applies to women as well, for example.

I have a little list—and I will pass it to Ms Knight at the end if that is of assistance—of the equivalents in other jurisdictions and their names. That can be a point of reference. The amendments you see today have very little in the way of policy changes. They are really dealing with technical rules to improve the clarity and functionality of the *Interpretation Act*.

I can go through some of the ones that are not extremely technical, but are really minor changes. If we look at clause 7 of the bill, which amends section 17—section 17 of the *Interpretation Act* is almost like a glossary or a dictionary of definitions. At the start of every act you have a section that lists interpretation and definitions. The ones in the *Interpretation Act* apply to all other acts unless that act specifically says it does not apply. That can be useful when there is a term we want to cross through different acts.

For example—and this is one of the ones we are looking at in the amendments—the Northern Territory Civil and Administrative Tribunal, the NTCAT, gets referred to in a lot of different acts that say you can appeal to the NTCAT or

something along those lines. There is currently a definition there referring to 'Civil and Administrative Tribunal'. We are using NTCAT because that is used through lots of acts. That is one of the things being amended.

A definition of a business day is being inserted. Previously we did not have that. I will point out that when I was going through with some of the people involved in the development, the definition we have—and this might be a matter the committee wants to comment on—the definition we have excludes Saturdays and Sundays. It excludes public holidays 'in the place concerned'. I queried what happens when you have things like the Tennant Creek Show and someone has lodged an application.

If someone in Tennant Creek lodges an application in Darwin, which is the relevant place? That might be something we have to tweak as a consequence. That is the gist of the kind of things they have in there. The definition of a public place comes up in a lot of acts. The definition of a revenue unit—we already have definitions of penalty units in there, but now we have revenue units as well. The definition of a year—there was not a definition of a year. That just meant every time someone used a year, they had to spell out exactly what that meant. That is the sort of thing that is in there.

Section 24 is probably the only one that, I suppose, looks like it has some policy aspect instead of being completely technical. This is clause 9 of the bill. This amends the provision relating to gender. It does not just recognise binary gender, but people who are intersex or perhaps do not identify with a specific gender. The genesis of this—I have to say gender has been recognised as a non-binary in some legislation since the 1990s. Victoria's goes back that far and New South Wales goes back a similar way. In 2014 there was a High Court case between the New South Wales Registrar of Births, Deaths and Marriages and a person called Norrie who wanted to be registered as having a non-specific gender identity. The High Court affirmed that this is a thing—not all human being can be classified by sex as either male or female. I understand that some people prefer the term intersex and some prefer using the term that they have sex characteristic differences.

Essentially the wording we have in the proposed amendment is wording that has been recently agreed nationally by the Parliamentary Counsels' Committee. It is intended to make sure we do not have gaps in the law when we have people who do not identify with the gender binary or have sex characteristic differences. At the moment, there would be some ambiguity about whether laws apply to people in those situations.

It is not something I have had much involvement in, but I know there are a lot of consequential changes following on from the changes to the law around same sex marriage by the Commonwealth. It means everybody has to go through their legislation where people have used 'man' and 'woman' and make it 'spouse' and things like that. This is not that project, but to some extent it is flowing out of some of those changes that have taken place in that space.

If I look at other legislation, none of the others have specifically been amended to include sex at this stage. We would be the first. But as I said, this is part of a national trend that is likely to take place in that space for clarity.

Sections 38D to 38DB of the *Interpretation Act* at the moment has some principles around sentencing. One of these actually comes up a lot. Because it is buried in the *Interpretation Act*, people do not know where to find it. This is around corporate penalties. There is a provision in there that says when there is an offence, if it is committed by a corporate body—unless there is something to say otherwise—the penalty is five times higher than for an individual. Often, people are not aware of where this is or where to find it. Because of that issue, those provisions are being moved into the *Sentencing Act*, where we think people will find them more readily. So, there are a couple around that.

There is also just a really technical amendment around how you impose fines. So, there are some offences—particularly more serious offences—where there is just a term of imprisonment specified as the maximum penalty. For example, it might say 'two years imprisonment' and it does not say 'two years or a fine of 200 penalty units', which might be something you see a lot. There is a provision here that says you can translate that to a fine automatically, excluding life imprisonment—it does not apply to life imprisonment. Basically, two years is 200 penalty units, three years is 300 penalty units and so on. That is the standard conversion and it just clarifies that that is how that works and that they can, in fact, impose both the term of imprisonment and the fine, or one or the other.

Madam CHAIR: Ms Heske, in regard to section 38D, where it talks about the *Ostojic v Threlfo* case. By moving the definition from the *Interpretation Act* into the *Sentencing Act*, we are likely to not see cases like that.

Ms HESKE: Yes.

Madam CHAIR: Fantastic.

Ms HESKE: There are just some sections being moved around, some clarification about how it works when people are appointed in acting roles—sorry, that is modernising wording. Section 48A clause 18 of the bill allows—I am sure it was very forward-thinking in its day—but it allow for when an act says you have a meeting, that you can participate in that meeting by telephone or closed-circuit television, facsimile exchange or any other means of communication.

While 'any other means of communication' is quite broad, we want to make sure it is crystal clear that you can use modern technology. We are putting in the exchange of emails and online facilities. We are taking out facsimile exchange because that does not seem to be a used technology anymore. Closed-circuit television will come within those other

definitions, although that is extremely unlikely. People are much more likely to use video conferencing or skype at this stage.

There will be a change that maybe you will notice, lawyers certainly will. At the moment, when you refer officially to Northern Territory legislation, you refer to it by the title only. In pretty much all other jurisdictions, it is the title and year. It will be the title and year under these amendments. There are transitional provisions so that if people go on referring to it without putting the year in, it will still be valid.

Section 62B is amended. That is quite important. This is clause 22. This is just to make sure they fully take into account all the possible extrinsic materials when interpreting an act. Extrinsic materials includes the debates and what were second reading speeches, the explanatory statement the minister tables and that kind of thing. We have made sure the language reflects what is happening now, explanatory speech rather than second reading speech. It just broadens that slightly so there is then some debate about scrutiny committee amendments and things. That is all definitely covered in the materials the court—this section spells out legally what the court can take into account in determining what the intention of parliament was in putting a section a certain way.

Other than that, it is really technical, just tweaking words—changing '12 months' to 'a year' and stuff like that. Unless there are specific questions the committee has, that is probably all I would say as an overview.

Madam CHAIR: Sure. Member for Katherine, do you have any questions?

Ms NELSON: No, thank you.

Madam CHAIR: Ms Heske, I have a couple. It might be for you to take on notice. The new definition of 'business day' contains a policy element. I just want to get a bit more explanation about the impact. I guess you were talking about the Tennant Creek Show, which is a public holiday there, whereas it is not in Darwin. I think I was reading a bit about if it is a Saturday and a business is open for the majority of the day, that may be deemed a business day. I was just wondering what the changes might entail.

Ms HESKE: Give me a moment, let me see if there is anything ...

Madam CHAIR: I think it was in the minister's explanatory speech.

Ms HESKE: I have the speech. I will check that one too. I do not think it means for a specific business. It means if, say, the Territory government declared that part of what would normally be a business day is a public holiday, for example the morning, the definition as it is proposed would say that is a business day. That would not be a public holiday.

Madam CHAIR: Okay. The next one was section 69 to be amended to acknowledge that NTCAT, as well as courts, can deal with monies recoverable under the act. I am guessing with this one this provision exists in one legislation but does not in another. I thought that provision would have already existed for NTCAT to deal with monies recoverable.

Ms HESKE: This is clause 24, section 69?

Madam CHAIR: Yes.

Ms HESKE: My note here from the Parliamentary Counsel when I discussed it with them, is that they saw that change as purely updating the language—modernising the language. The existing provision uses, I suppose, fairly old language in where monies are due in pursuance of an act. The monies are recoverable. It has changed to 'if money is due under an act'. Sometimes, there is a push now to having more plain-English drafting. That is my understanding of what has been changed there.

Madam CHAIR: Great. I think you have answered the rest of my questions. What I was also looking at is, this is the Interpretation Amendment Bill—how often is the process looked at to bring all the legislative wording into line? Is that a regular thing your agency undertakes—the Parliamentary Counsel?

Ms HESKE: That is a good question. That is probably a question I would have to take on notice.

Madam CHAIR: Sure.

Ms HESKE: My understanding is these particular amendments—although you can see at the end of the *Interpretation Act* how often it has been amended. But a lot of them are consequential. The ones that will not be consequentials are where it actually says, 'Interpretation Amendment Bill'. The last one of those was in 2002, from what I can see on the list at the back. That said, there are a good 20, 25—I estimate—bills since then that have amended the *Interpretation Act* in some way.

Madam CHAIR: Very good. So, overall, this will not really have—will it have a huge impact on Territorians?

Ms HESKE: I do not think so. It is more just an issue of clarity in those cases that might test a definition. It just helps define those grey areas a bit better.

Madam CHAIR: That is all my questions. Are there any further questions from the committee?

Mrs LAMBLEY: No.

Madam CHAIR: Okay. Thank you very much, Ms Heske, on behalf of the committee for appearing before us this morning.
