



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing Transcript
Public Information Legislation Amendment Bill 2018

3.00 pm, Wednesday 20 February 2019
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
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine

Witnesses: Julie Crisp: Auditor-General for the Northern Territory
Maria Mohr: Deputy Chief Executive Officer, Department of the Chief Minister
Jean Doherty: Executive Director Federal Policy and Strategic Coordination, Department of the Chief Minister
Karen Vohland: Executive Director Strategic Communications and Engagement, Department of the Chief Minister
Genevieve Mogridge: Director Federal Policy and Strategic Coordination, Department of the Chief Minister
Tom McCrie: Principal Legal Policy Officer, Department of the Chief Minister

PUBLIC INFORMATION LEGISLATION AMENDMENT BILL 2018

Northern Territory Auditor-General's Office

Madam CHAIR: Good afternoon everyone and thank you for joining us. I am Ngaree Ah Kit, Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public hearing in to the Public Information Legislation Amendment Bill 2018. I also acknowledge my fellow committee members in attendance today, Deputy Chair, Robyn Lambley, Member for Araluen; Sandra Nelson, Member for Katherine—on the phone, and Lia Finocchiaro, Member for Spillett.

I welcome to the table to give evidence to the committee, Julie Crisp, Auditor-General. 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 is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take 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. Could you please state your name and the capacity in which you are appearing?

Ms CRISP: Thank you Madam Chair. Julie Crisp, Auditor-General.

Madam CHAIR: Thank you Ms Crisp. Would you like to make an opening statement?

Ms CRISP: I would like to make a brief opening statement. Thank you for the invitation to appear before you this afternoon, and to receive and respond to any questions that you may have in relation to my submission.

My submission addresses four direct concerns that I have in relation to the proposed amendments to the *Public Information Act*. Those being in summary:
Referencing the public information to a website or a contact person may not necessarily be specific enough to enable a reader of the public information to verify the factual accuracy of the content.

The second aspect, broadening the regulations to include part 2(3)(H), which provides that "*the Auditor-General may consider if the provision of information relating to new, existing or proposed government programs, policies or projects is in the public interest*", as I believe it introduces ambiguity and introduces a risk of politicising the role of the Auditor-General.

There are a couple of terms in the Act: clarification of who should be considered a relevant minister within the amended Act, may be beneficial when interpreting the Act, and there are some contemporary issues arising from the use of social media and advertising, such as what

we have seen on fence bunting that do not appear to have been perhaps adequately addressed in the proposed amendments.

My submission notes that amendments to the legislation since 2010 have progressively broadened the application of the legislation and resulted, I acknowledge, in findings that whilst correct from a strict interpretation of the legislation are likely to have gone beyond the intent of the original legislation.

I note that many findings that I have made relate to contraventions of the legislation have occurred due to public information not clearly distinguishing a statement of fact from a statement of comments. That is primarily because the source of the information is not referenced. I do think it would be useful if any amendments to the existing legislation resulted in legislation that addressed the original intent, reduced ambiguity in interpretation and addressed contemporary issues.

I am confident that the committee members are familiar with my submission, and I welcome the opportunity to respond to any questions.

Madam CHAIR: Thank you Ms Crisp. I now invite the committee to ask questions.

Mrs FINOCCHIARO: Thank you very much Auditor-General. Were you consulted in the development of this bill, and would an Auditor-General ordinarily be consulted on amendments to this type of bill?

Ms CRISP: No. I was not consulted in the drafting of this bill, and I understand that that was made clear at the previous hearing. Is it usual practice? It is established practice that there is to be consultation with independent statutory officers if it is relevant during the development of legislative proposals, particularly if that legislation has an impact on these statutory officers.

As you would be aware, the Auditor-General is responsible for taking referred matters and making determinations under the *Public Information Act*. It would be usual and consistent with the Department of Chief Minister's Legislation Handbook to consult with the Auditor-General in this regard.

Is it usual, noting that this legislation has been previously amended? It is fair to say that both I and my predecessor, Mr McGuinness, have been consulted in the past in relation to the legislation. Where that has assisted is in understanding some of the challenges we have in interpreting the legislation.

Mrs FINOCCHIARO: Thank you. Auditor-General, in your submission and your opening address, you mentioned the term 'relevant minister' and that that would benefit from being more explicitly defined in the act. As the act currently stands, how do you view 'relevant minister' to be interpreted? For example, this government has assistant ministers. Would assistant ministers qualify as a relevant minister under the bill?

Ms CRISP: Member for Spillett, it would be useful to have that clarification in the legislation. It has been my interpretation that a minister would mean a minister or an acting minister in the event that minister was absent and someone was acting in their role. That person is usually clearly defined as the acting minister. I have not been asked or referred a matter to make a determination that has addressed that specifically, but my view or interpretation, without having

tested it, would be that an assistant minister is not the same as a minister. However, an acting minister takes on the role of a minister.

Mrs FINOCCHIARO: Would the position of Leader of the Opposition be equivalent to that of a relevant minister?

Ms CRISP: It would be useful to have some clarification about that. Again, I have not had a matter referred where I have had to test that.

Mrs LAMBLEY: Looking at the explanatory speech for the legislation given by the Chief Minister, he gives a few examples of how this will improve things. From my understanding, the only examples he has given is that with the changes to this legislation, minister can now have photos taken with kids and go on the website or in the newsletter, the minister can use a letterhead. A photograph of the minister can now be used with this legislation but it cannot be at the present with government-produced paraphernalia, publications. Is that the essence of what this is about?

I have had a very simple look at this, I have not studied it in great detail. That seems to be what is coming out at me. This legislation ...

Madam CHAIR: That question would probably be better asked of the department or the Chief Minister. It is not for the Auditor-General to guess what legislation ...

Mrs LAMBLEY: I can ask what I like of who I like, if we are talking to the Auditor-General. I am wondering if that is your take on ...

Ms CRISP: Member for Araluen, in fairness, I agree it is probably a question best directed to the Department of Chief Minister. That said, as a parent, I have plenty of school newsletters that have pictures of children with ministers and MLAs. I have never had a school newsletter referred to me and I am unlikely to have one ...

Mrs LAMBLEY: Okay. That is an interesting comment. Thank you.

Madam CHAIR: At the moment it could be referred to you because it is not covered under the *Public Information Act*. Is that right?

Ms CRISP: A school newsletter, assuming it is published by the school, I am not sure that it would land on my desk anyway, given global school funding schools are responsible for spending their budgets as they see fit, and there is not necessarily a follow the dollar process that happens down to that.

Mrs FINOCCHIARO: Could explain your concerns around the source information? Currently it is that you look to see if the information distinguishes a statement of fact versus a statement of comments, but no source of information is required to be provided. This bill goes some way in requiring that but the source need not—the source is a very broad term. Do you mind explaining your concerns around that area of the bill?

Ms CRISP: A concern I have with the existing legislation is not vastly different to the concern I have with the proposed amendments. Specifying a source—the proposed amendments suggest that nominating a source or nominating a contact person is basically as good as

referencing an individual, referencing to a generic web page. If I interpret that as being sufficient then that is fine, but I have gone on to a lot of web pages as references where it is not immediately clear where the factual information is to back something up.

It is always going to be an area of interpretation and it is always going to be challenging. What I have put in my submission is merely because something is on a website does not make it fact. The process to say “*is this information factual?*” would still need to occur if it was referred to my office. That is, through a certain process to confirm that it is factual.

Mrs FINOCCHIARO: Foreseeably, a publication could reference as a source document, a ministerial press release. Would that be correct?

Ms CRISP: Yes.

Mrs FINOCCHIARO: You made a comment in your opening about whether or not it deals properly with new technologies, like social media or even fence bunting, so under this proposed bill it would be—correct me if I am wrong—would it be lawful, for example, for the Chief Minister to print his face on fence bunting that we commonly see even just outside with another job creating project bunting. Could, under this bill, we be seeing faces of minister’s on that bunting?

Ms CRISP: I have not examined that specifically. My concern more broadly was around, at the previous hearings, some commentary that the legislation is designed to address paid advertising. My concern primarily around the use of social media, the use of bunting as part of a construction project is how easily definable something is as paid advertising, whether that is actually the correct category.

If I was to look at social media posts, for example, you do not necessarily have to pay to put something on Facebook although you may choose to pay to have that sponsored and keep it coming to the top of people’s feed. But you may be using the resources and the property of the Territory to put that post of Facebook.

The amendments to the legislation do not address that. It is an existing clause within the act that you cannot use the money or other property of the Territory—or that the public information that is covered under this is covered by using the money or other property of the Territory—I do not think that has been addressed.

There is perhaps an argument that if the bunting is absorbed in the cost of the contract, whether it is building a car park, road or whatever it might be, it is not necessarily that clear on whether that is paid advertising or a paid construction contract and that is an add-on.

You are probably aware that previously when bunting was used by construction companies it was for their own advertising purposes. Having branded bunting—is it part of the contract or is it paid advertising? There is some aspects that could be better addressed.

Mrs FINOCCHIARO: Auditor-General, this bill adds a public interest exemption. Could you talk us through your concerns about that?

Ms CRISP: Certainly. The current public information regulations have a number of purposes that I am required to take into consideration when I am assessing whether public information has met or contravenes the provisions of the act and the subordinate legislation.

There are a number of purposes that include maximising compliance with the laws of the Territory, achieving awareness of newer amended laws and a range of others. Whilst it is not added on to the end, if I look at the list of purposes, this additional clause seems overly comprehensive as it currently stands.

I am not convinced that the additional clause specifically adds another or further purpose. It is almost a catch-all clause that says that if it is not one of these purposes then there might be perhaps another purpose—being that the information relating to new, existing or proposed government programs, policies or projects is in the public interest.

One could argue, I think, that if it is in the public interest it would have met one of the purposes that already exist. There is a concern that if there is a catch-all phrase and it is the role of the Auditor-General to interpret and apply the catch-all phrase, then in some respects the Auditor-General is being asked to form an opinion on what is in the public interest.

There is a range of things that of interest to the public which are not necessarily of the public interest. If I were to suggest that particular information was or was not in the public interest, it risks politicising the role.

Madam CHAIR: Are there any further questions?

Mrs LAMBLEY: In your opening statement you said that you had a concern that this legislation may create more ambiguity. Could you give me an example of what you meant?

Ms CRISP: Certainly. Perhaps the point I have just touched on is one of those. Where you have quite specific purposes and then there is a catch-all phrase, then I am left to interpret, again, something else that is open to interpretation.

I am delighted to say I am no lawyer and interpreting legislation is something that I will take as it is printed. The clearer that is, the easier it is to interpret and apply—not just for me in making a determination, but for those individuals within the agencies who are in the communication areas who are trying to comply with the legislation while still delivering a message. That clause leads to ambiguity.

I also think that if we were to look at the explanatory memorandum that accompanied the original legislation in 2010, it had a fairly specific purpose. That was in relation to party political advertising. This legislation was brought in to prevent the promotion of party political interests. Notwithstanding that its existing form is a short piece of legislation and its amended form is short, it could probably be shorter and more direct and achieve the result that was initially intended.

Mrs LAMBLEY: I do not have any more questions.

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

Ms NELSON: I do not have any questions right now, but I ask if the Auditor-General's opening statement could be tabled because I could not hear a word of it.

Madam CHAIR: Auditor-General?

Ms CRISP: Absolutely.

Madam CHAIR: Thank you very much for appearing before the committee this afternoon.

Ms CRISP: Thank you.

Mrs FINOCCHIARO: Thank you.

Department of the Chief Minister

Madam CHAIR: Welcome back everybody and thank you for re-joining us. I acknowledge my fellow committee members in attendance today and the Member for Katherine on the phone.

I welcome to the table to give evidence to the committee from the Department of the Chief Minister at the public hearing for the Public Information Legislation Amendment Bill 2018. Maria Mohr, Deputy Chief Executive Officer; Jean Doherty, Executive Director Federal Policy and Strategic Coordination; Karen Vohland, Executive Director Strategic Communications and Engagement; Genevieve Mogridge, Director Federal Policy and Strategic Coordination and Tom McCrie, Principal Legal Policy Officer

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply.

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I will ask each witness to state their name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before we proceed to the committee's questions. Could you please each state your name and the capacity in which you appearing?

Ms DOHERTY: Jean Doherty, Executive Director Federal Policy and Strategic Coordination, Department of the Chief Minister.

Ms MOHR: Maria Mohr, Deputy Chief Executive Officer, Department of the Chief Minister.

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

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

Ms MOGRIDGE: Genevieve Mogridge, Director Federal Policy and Strategic Coordination, Department of the Chief Minister.

Madam CHAIR: Ms Mohr, would you like to make a brief opening statement?

Ms MOHR: Thank you for the opportunity to brief the committee on the Public Information Legislation Amendment Bill 2018.

The *Public Information Act 2010* was first enacted to ensure appropriate use of public funds when providing information to the public. This includes ensuring that public information is factual and free from political bias. The act establishes a transparent and accountable mechanism for the review of public information produced by public authorities.

However, as previously outlined to the committee, feedback from government agencies indicated that the current wording of the act and the Public Information Regulations can be confusing, contrary and open to interpretation, which has led to unintended breaches.

The act is also in need of updating to reflect the use of contemporary mediums like the use of social media. There have been occasions where agencies have not published or have hesitated to publish information where it is appropriate and beneficial to do so out of concern for creating a technical breach of the act.

The legislation in its current form has on these occasions been counterproductive to informing Territorians about government programs, policies and initiatives. For example, when the Chief Minister signed the landmark Groote Archipelago local decision-making agreement with the Anindilyakwa Land Council in November 2018, no photos could be published as the Chief Minister appeared in all of them.

Another example is the presentation of the Chief Minister's Literary Awards where photographs of the Chief Minister and award recipients cannot be used in either internal or external media, including websites or local media outlets impacting on the recognition of students literary accomplishments.

While agency staff have legitimate reason to be aware of the minister and portfolio their agency is responsible to, the current legislation also does not allow agencies to use photos of the relevant minister on an internal website or intranet. This is in contrast to other states and Territories where publishing photographs of relevant ministers on government agency websites is standard practice. This and other similar examples are clearly unintended outcomes of the legislation as it stands.

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

In developing the proposed amendments, consideration was given to the original act and second reading speech, which addressed the intent of the government of the day when it introduced the legislation in 2010. Consideration was also given to the findings and recommendations of the Auditor-General as outlined in her August 2018 report to the Legislative Assembly.

The Department of the Chief Minister appreciates the extensive commentary and analysis of the Auditor-General in her report, as well as her submission to the scrutiny committee, which have been great assistance in the policy development process.

The department acknowledges the concerns raised by the Auditor-General about the lack of consultation and we apologise for this oversight. However, we were under the genuine belief that we did not wish to compromise the independence of the Auditor-General's role.

The findings and recommendations of previous reports have informed the development of the bill. As noted in the department's response to the committee's written questions, while different in style, our view is a number of the proposed amendments achieve the approach outlined in the Auditor-General's submission.

The bill amends the act and regulations by strengthening existing provisions so that the interpretation and application of the provisions is in alignment with the intended policy objective of preventing the use of public money or other resources to prepare and publish information that promotes party political interests.

The proposed amendments also recognise the practical requirements of providing information to the public, and includes additional guidance to agencies to assist them in complying with the act and regulations. For example, the note for section 6(2)(f) has been included to provide guidance for public authorities as to the means for identifying confirming the requirement to source data or a means for identifying the data can be met by referencing a website or a contact person to provide the data source.

This clarification has been provided as it is not practical to source all data in all publications. A requirement to do so would be an additional obligation not previously contemplated in the act or regulations. Public authorities will be required to provide details of the source information if requested. Contact persons listed in public information will, therefore, be required to have information sources available to members of the public if and when requested.

Accountable officers—that is, Chief Executive Officers of agencies—will be responsible for ensuring that information relating to sources is available to the public and the Auditor-General should a piece of public information be the subject of review.

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

A number of the key amendments include:

- consolidating obligations spread across the act and public information regulations to ensure that all obligations are contained in one single section of the act
- strengthening requirements in relation to information containing facts, statistics and data by removing any inconsistencies created by using different terms across the act and regulations

- increasing consistency in application across government by redrafting commonly misinterpreted obligations, including the obligation to distinguish a statement of fact from a statement of comments into other more definitive obligations
- clarifying the obligation to identify facts and comments by replacing the current requirement to distinguish facts from comments with the simpler requirement that facts must be presented accurately and clearly identified through appropriate referencing
- highlighting that the requirement to source facts, statistics or data can be met by referencing a website or a contact person to provide the data source. It is not practical to include source information in all publications and this change will give agencies greater certainty on this obligation.
- removing unintended prohibitions on the use of images of a minister by introducing a contemporary and technology-neutral definition of ‘advertisement’ to mean published by the purchase of media placement under a commercial arrangement. It is noted the current act and regulations do not include a definition of ‘advertising’.
- providing additional restriction on the use of images of a minister and information other than advertising to require that a minister must have a sufficient connection with the content of the information, specified to be either the Chief Minister, whose responsibility extends across all portfolios, or the minister with responsibility under the Administrative Arrangements Order.
- improving the practicality and useability of the act by introducing a public purpose test for the content of public information to replace the requirement for compliance only with the criteria specified in the regulations.

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

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

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

Thank you for the opportunity to address the committee. I will now present my colleagues, who have already introduced themselves and are available to answer any questions you may have regarding the amendment bill.

Madam CHAIR: Thank you. I now invite questions from the committee.

Mrs FINOCCHIARO: Thank you very much. From the outset, I acknowledge your apology that the Auditor-General was not consulted as part of the process. It seems like a hugely missed opportunity to better inform the crafting of the bill. Given the fact that the Auditor-General was not consulted and ought to have been, should this bill not be in front of us, it should be back at the drawing board in that consultation phase with the Auditor-General?

Ms MOHR: That is not the decision that the Department of the Chief Minister can make.

Mrs FINOCCHIARO: With respect to the definition of ‘relevant minister’, does that then rule out assistant ministers being captured by that definition?

Mr McCRIE: The definition as it stands relies on the Administrative Arrangements Order, so it would capture acting ministers but would not capture assistant ministers.

Mrs FINOCCHIARO: So, it would not extend to the position of Opposition Leader or Independent members of the Assembly?

Mr McCRIE: No, it would not. However, there are thresholds within the definition of what is public information and what a public authority is that would make that less relevant for Independent members or the Leader of the Opposition. For example, it does not include using electoral allowances—that is not within the scope of the act.

Mrs FINOCCHIARO: Going back to the process of consultation with the Auditor-General, is it not a requirement to consult within her statutory offices?

Ms MOHR: It is not a requirement. It is part of the legislation handbook and is considered good practice, but it is not always undertaken.

Mrs LAMBLEY: In the explanatory speech given by the Chief Minister in relation to this bill, on the second page and third paragraph, it talks about section 6(2)(c) and how this section of the act currently requires statements of fact to be distinguished from statements of comment. It says there is confusion as to how to apply this provisioning practice. Then it says:

All four cases reviewed by the Auditor-General were found to have breached this provision due to differing interpretations.

I cannot understand, if that is pivotal part of your case for reforming the legislation, why you would not have spoken to the Auditor-General about how she made this seemingly objective determination on these four cases. Apart from that, what were the four cases about? What was the Chief Minister referring to?

Ms MOHR: The four cases are outlined in the Auditor-General’s August 2018 report.

Mrs LAMBLEY: And they are about—vaguely—what?

Ms MOHR: Three of them related to use of an image of a minister and the fourth related to the use of information about some changes to the GST funding arrangements.

Mrs LAMBLEY: Okay. And how did that breach? I am getting the image examples because they have specifically been talked about a lot—the use of images of ministers and how, for some reason, it is preferable that that be allowed to happen now. But what about the GST? Could you explain that case?

Ms DOHERTY: Member for Araluen, I will try my best, although I am not the expert by any means. However, my understanding is that instance relating to GST expenditure was deemed to be a breach because the GST analysis included in the communication did not include an audited account of the GST review.

However, it was based on the best available Treasury information at the time, and sourced from the Department of Treasury and Finance officials, according to the best available information they had about the GST situation at that time.

Mrs LAMBLEY: Your contention is that these four cases found to have been in breach of the act by the Auditor-General were in some way wrong—is that what you are saying?—and now have to be changed or fixed. Is that what you are saying?

Ms DOHERTY: Member for Araluen, I believe the intention that we are referring to in relation to the changes is about the genuine belief from agency-based communications officers that they were actually operating within the confines of the act when they published the information. From our perspective there is a lack of clarity about how you would apply the regulations and act in practice, which is what we were seeking to amend through these reforms.

Mrs FINOCCHIARO: What makes these reforms any clearer than the existing legislation? The plan is for DCM to publish guidelines and provide education to departments. Is that not an available remedy now, rather than making amendments to the act?

Mr McCRIE: Yes, training and education is clearly an option at all times. However, there were a number of fundamental aspects in the act that was creating that confusion. By amending the act to provide that clarity, then the following education campaign will be much more effective.

Some of the things are fairly basic. The terms facts, data and statistics were used interchangeably, but in different places, creating potential interpretation that in each place it is actually intended to create a different meaning. Statement of comments is not included in the act anymore because that is quite a difficult concept to define and apply in particular circumstances. The act is now using what is a fact which is much easier to apply.

Mrs LAMBLEY: You said you did some consultation late last year, earlier this year within the government, the bureaucracy. Was that correct? Or was that the previous one, the Electoral Commission?

You did a consultation process within the government. Is that correct?

Ms VOHLAND: Yes, we spoke broadly with communication officers from across agencies about the difficulties they were experiencing in applying the intent, purpose and principles, and lining that up with the act and their interpretation. They raised with us the concerns they had with that, from that perspective.

Mrs LAMBLEY: Did they have difficulty understanding the act? Was that the problem?

Ms VOHLAND: They had difficulty in interpreting it because there was a lack of very clear direction. Some elements of it could be open to interpretation.

Mrs LAMBLEY: Okay. I do not have any more questions. Thank you.

Madam CHAIR: I put on public record, I note that the Social Policy Scrutiny Committee provided written questions in the lead-up to this public hearing. I want to ensure they are tabled on public record as well.

Mrs FINOCCHIARO: I have some concerns about the reference to ‘a source’. Conceivably, under the bill, material could reference a ministerial media release or a website that contains factually inaccurate information. It calls into question the veracity of the source. There is really no requirement. How is that provision setting out to achieve the intent of the original legislation?

Ms MOGRIDGE: While the amendments provide for communications staff to use a means for identifying in the public information—whether that be a website reference or a contact person—one of the amendments is continuing to require that the public information cannot contain information that includes statements that are misleading.

If the information was presented as being factual because it has a website reference, but in the end that information was misleading, it would, in effect, be a contravention of the act. It is not a matter of just having a reference, ultimately you have to be able to provide and substantiate the information.

Madam CHAIR: That lies with the Chief Executives of the departments to ensure that the information is factual.

Ms MOGRIDGE: Yes, Madam Chair, in the end accountable officers or the CEOs are responsible for ensuring the information is correct.

Mrs FINOCCHIARO: How ...

Ms NELSON: If that ...

Mrs FINOCCHIARO: Oh, sorry.

Ms NELSON: I want to go back to that quickly. This is introducing a clause or amendment where they have to provide a source for the information they are presenting in that media release. Do I understand that correctly?

Ms MOGRIDGE: Member for Katherine, they either have to provide the information source or a means for identifying the source. The proposed amendments are based on the existing Regulation 4(c).

The proposed subsection is that it would be a contravention of the act if the information fails to specify the source or a means for identifying the source of any facts, including comparisons, statistics or data. The existing Regulation 4(c) requires public authorities to ensure that the source of all data is indicated or a means for identifying the data source is provided.

Ms NELSON: And that is vastly different from what is currently in place? Is that right?

Ms MOGRIDGE: It is built upon the current regulation, it is not a new introduction to the act. The proposed amendments actually consolidate the obligations that are currently spread across the act and regulations into a single section within the act. By putting it into the act, it effectively strengthens the obligations because they are not within a piece of subordinate legislation.

Mrs FINOCCHIARO: Can I confirm what you said then? There is only a requirement to source information, not source the fact?

Mr McCRIE: Taking one step back from that, a number of the changes are bringing together obligations that are spread across the act and regulations. Currently, section 6(2) of the act already includes obligations relating to facts. In the regulations there are three or four regulations that then flesh out certain parts of that section 6, but it is not always entirely clear which parts that relates to.

The obligation we are talking about is just one of seven, and they all need to be read in conjunction so information cannot be misleading. If it is facts, statistics or data, it must be presented accurately. That is really the core of what the information has to do. To support that, there has to be a source for that information.

The existence of the source does not make it a fact, it will and can assist in looking at whether it is accurate or misleading. Another significant benefit of specifying the sources is it allows the public to look at the information and make up their own minds.

You have used the example of referring to a media release. That will not be a strong piece of source information, depending on what that is referred to. The sourcing is only one small part of the whole picture about ensuring that public money is used appropriately.

Mrs FINOCCHIARO: When then were the words 'factually inaccurate' excluded from the bill?

Mr McCRIE: Section 6(2)(e) requires that the information must be presented accurately. There still is an obligation for it to be accurate. It has been rephrased, if that is your question.

Mrs FINOCCHIARO: Thank you. In the Auditor-General's submission and comment, she expressed the new criteria of 'in the public interest' as being very broad. Why was it deemed as a necessary additional criteria to the extensive list in the current act?

Mr McCRIE: Bringing in the idea of public interest created a more conceptually understandable test—it adds cohesion to the list of individual criteria that were currently set out in the regulations. As the regulations currently stand, Regulation 3(a) and (b) both set out lists of criteria for information.

The Auditor-General pointed out in her submission that if something is in this list, it is likely to be in the public interest.

It was about adding some cohesion to that list. Rather than just saying it has to be on the list, the primary test is that it must be in the public interest. The non-exhaustive list in Regulation 3 as proposed is very strong guidance as to what would be in the public interest.

It adds that relatively small amount of discretion for the Auditor-General to see something and think, 'Well, it is almost falling within this criteria, but not quite, so I have to deem that it is a contravention when it close, but not quite there.'

Similarly, with new Regulation 3(h), it is not a significant addition, it is closes the gap within a few existing regulations. Rather than having to look at whether a policy, project or program is a government program or service, it is, I guess, a terminology issue. That would be the reason that loophole was created.

Mrs FINOCCHIARO: Does DCM disagree with the Auditor-General's comments that it is then left to the Auditor-General to determine what is or is not in the public interest, and therefore, runs the risk of politicising that decision making?

Mr McCRIE: No, absolutely, it will fall to the Auditor-General to make that assessment. The decision as to whether any piece of public information is at the decision of the Auditor-General. Looking at all of the items in section 6(2), the Auditor-General must make an assessment of whether information falls into those categories. That is starting from whether or not it promotes party particular purpose. There is that discretion on the Auditor-General.

Mrs LAMBLEY: Was it not the intent of the legislation to create more clarity and less ambiguity? I find it strange that that is inconsistent with what the intent of the bill is.

Mr McCRIE: I am sorry. What ambiguity were you referring to?

Mrs LAMBLEY: What you just described then—giving the Auditor-General more discretion. Was that not the problem in the existing bill?

Mrs FINOCCHIARO: It was not prescriptive enough, so the departments were having trouble in interpreting it, whereas it now a phrase like ‘in the public interest’ is extremely broad.

Ms DOHERTY: Members for Araluen and Spillett, if I may, as Tom was referring to the new amendments to section 6(2) of the act, we have also referred to the very clear guidance provided under Regulation 3, which provides a list of (a) to (k), as well as examples, of some of the things—the majority of things, in fact.

It is not an exhaustive list because we understand there are other areas where there may be discretion required by the Auditor-General to interpret that. But (a) to (k) of Regulation 3 provides a longer and clearer list of what might be included in the public interest definition.

Does that assist to help?

Mrs LAMBLEY: I do not know, to be honest. I do not know if it assists or not.

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

Ms NELSON: No, not right now.

Mrs FINOCCHIARO: How do you feel that the bill adequately deals with the paid advertising component, given social media—you are not necessarily paying for an ad, but it is on Territory government property. We all know even the issue of the fence wrapping is tied up as part of a contract, whether it is something that agencies do separately as a different activity. How does the act address that issue of paid advertising? There are lots of incarnations, I suppose, of what constitutes paid.

Mr McCRIE: The definition of ‘advertising’ is referred to in new section 6(2), paragraphs (c) and (d). That is in relation to where you can use an image of a minister or whether there is a complete prohibition on using an image of a minister. It sets a higher bar for what is happening when you have paid advertising in certain circumstances.

The definition of ‘public information’ as whole would apply to all communications unless specified otherwise. The obligation to not promote particular party interests or the information to not include statements that are misleading applies whether or not it is paid advertising.

In the example of social media—absolutely, there are instances where a social media post might be boosted or whether it has been put up and there has been no cost at all. The obligations that it not promote party particular interests or that it is accurate and not misleading all applies anyway. You cannot use an image of a minister or a minister’s message in any paid advertisement at all.

In the examples of fence wrapping, that will be subject to the *Public Information Act* and you could not have an image of a minister where it is paid advertising. If it is not paid, then there has been created set limits on when and which ministers you can use an image of.

Mrs LAMBLEY: Paid meaning to a commercial outlet to provide advertising?

Mr McCRIE: That is correct. The new definition refers to a media placement under a commercial arrangement to ensure that is cast as broadly as possible, however it is paid and wherever the media happens to be placed.

Mrs LAMBLEY: Not including taxpayer paid advertising? That is not included? The government does a lot of promotional work internally—does it not?—which could be seen as advertising. Anyway.

Madam CHAIR: I have one final question. The Auditor-General, I believe, advised that there is no definition currently in the act for advertising. Will that be incorporated in this new legislative amendment—to include social media and all those other outlets?

Mr McCRIE: Yes, the definition of ‘advertising’ includes social media, boosting and is broad enough to capture new forms of advertising that we may not be contemplating at this point in time.

Madam CHAIR: Thank you. Does the committee have any other questions?

Mrs LAMBLEY: No.

Ms NELSON: I do. I have a few quick questions. The paid advertising that comes with social media—I want to ensure that I and everyone else understands the differentiation here. If I, as the Member for Katherine, have my own social media page and I want to pay to boost something I have posted, that is at my discretion and that is outside—it is okay to do that? Right? I am not breaching the act or the law in doing that?

Mr McCRIE: The information published by members of an electorate using funding by an allowance payable to that member is not captured by the act, so that is completely excluded. It is really about government agencies ...

Ms NELSON: Sorry. Can you just hold on a second, there is somebody in the background moving papers and pouring water and it is completely killing what I can hear from you.

Mr McCRIE: Am I right to proceed?

Ms NELSON: Yes.

Mr McCRIE: Under the act as it currently stands, if the funding is used from an allowance paid to a member for the electorate, then that is not captured by the act.

Ms NELSON: Okay. Say, for example, I was a minister and I am issuing a media release as the minister for Primary Industry about an announcement I am making—it is a government announcement, a new government initiative—and that media release banner has my photo on it, then I post that on social media and pay for it to be boosted, is that captured within the act?

Mr McCRIE: Media releases are exempted from the operation of the act under section 4(1)(b) ...

Ms NELSON: Okay.

Mr McCRIE: if you are using your funds to then boost that, it depends on where the funds are coming from. I think no.

Ms NELSON: Okay.

Ms VOHLAND: Routinely, images of ministers are not on any media releases.

Ms NELSON: Okay. I remember with the previous government, I phoned up to get media releases and I was inundated with media releases. They always had photos of the Chief Minister at the time, and the minister for Primary Industry at the time on that media release banner for that announcement for that department. I just wanted to clarify that was being captured in the act.

Madam CHAIR: If the committee has no further questions that concludes our public hearing today. Thank you very much, representatives from the Department of the Chief Minister for appearing before us this afternoon.

Mrs FINOCCHIARO: Thank you.
