



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Statute Law
Revision and Repeals Bill 2019**

October 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Statute Law Revision and Repeals Bill 2019. This Bill provides for the repeal of obsolete Acts and provisions of Acts and for the repeal of legislative provisions that have not commenced and which are not ever going to be commenced.

The Committee received one submission to its inquiry from the Law Society NT which raised concern regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003*. While the Department advised the Committee that Supreme Court Practice Direction 6, as a current substitute for the Act, appears to be working well, I note that the Acting Attorney-General and Minister for Justice, the Hon Gerald McCarthy MLA, has undertaken to write to the Hon Chief Justice Michael Grant and Her Honour Chief Judge Elizabeth Morris to seek their comments on the issues raised by the Law Society NT.

The Department further advised that if either the Chief Justice or Chief Judge suggest that there is a practical need to retain any of the provisions of the Act, the Government will reconsider its position regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003*. Given the Department's response to the Committee's questions, the Committee has recommended that the Assembly pass the Bill.

However, to ensure that the Assembly is appropriately informed, the Committee has also proposed, at recommendation two, that the Attorney-General and Minister for Justice table the responses from the Chief Justice and Chief Judge regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003* in the Assembly prior to or at the time of the second reading debate.






On behalf of the Committee, I would like to thank the Law Society NT for their submission and the Department of the Attorney-General and Justice for their subsequent advice. I also thank my fellow Committee members for their bipartisan 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, House
	Sessional:	Social Policy Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	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:	Privileges
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
	Mr Chansey Paech MLA Member for Namatjira	
	Party:	Territory Labor
	Parliamentary Position:	Deputy Speaker
	Committee Membership	
	Standing:	House, Privileges
	Sessional:	Social Policy Scrutiny
	Mrs Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position:	Government Whip
	Committee Membership	
	Standing:	Public Accounts, Standing Orders and Members Interest
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
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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 Statute Law Revision and Repeals Bill 2019.

Recommendation 2

The Committee recommends that, to ensure the Assembly is appropriately informed, the Attorney-General and Minister for Justice table the responses from the Chief Justice and Chief Judge regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003* in the Assembly prior to or at the time of the second reading debate.

1 Introduction

Introduction of the Bill

1.1 The Statute Law Revision and Repeals Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and the Minister for Justice, the Hon Natasha Fyles MLA, on 14 August 2019. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 15 October 2019.¹

Conduct of the Inquiry

1.2 On 15 August 2019 the Committee called for submissions by 4 September 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Committee received one submission to its inquiry from the Law Society NT. The Committee held a public briefing with the Department of the Attorney-General and Justice on 21 August 2019.

Outcome of Committee's Consideration

- 1.3 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.
- 1.4 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.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Statute Law Revision and Repeals Bill 2019.

Report Structure

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

¹ Daily Hansard, *Day 2 – Wednesday 14 August 2019*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/753834>, pp.1-3

2 Overview of the Bill

Background to the Bill

- 2.1 In presenting the Bill, the Attorney-General and Minister for Justice noted that:
- the general thrust of the Bill is that of tidying up the statute book. The Bill does this by removing from the statute book obsolete Acts, Acts whose operation is spent or which are not going to be commenced and by making various statute law corrections. Consequential to the repeal of some legislative provisions that have not commenced, the Bill also modernises the provisions of the *Auctioneers Act 1935* and consolidates rules of conduct provisions relating to real estate, business and conveyancing agents.²
- 2.2 As Mr Robert Bradshaw (Director Policy Coordination, Department of the Attorney-General and Justice) advised the Committee:
- You will notice that current amending Bills that go through parliament have a clause at the end that says the Act expires the day after it commences. In the past they did not have those kinds of provisions so all those Acts that would under current practices be now automatically repealed are still there. Parliamentary Counsel has gone through to about 1960, reading them through to find out whether in all of these Acts that look obsolete, whether they are, in fact, obsolete in the sense of having maybe a transitional provision that has some relevance.³
- 2.3 Mr Bradshaw further advised that, following identification by the Office of Parliamentary Council of Acts or provisions within Acts that had not been commenced, the Department consulted the agency responsible for administration of the Act prior to making a decision as to whether it should be “abandoned, repealed or commenced.”⁴

Purpose of the Bill

- 2.4 As noted above, this Bill provides for the repeal of the obsolete Acts and provisions of Acts and for the repeal of legislative provisions that have not commenced and which are not ever going to be commenced. The Bill also provides for amendments of a statute law nature – making corrections and clarifications:
- The substantive amendments to the Act relate to the amendment of the current licensing scheme for auctioneers so that statutory responsibility for such licensing moves from the Minister to the Agents Licensing Board. The licensing provisions in the *Auctioneers Act 1935* (such as applications, penalties for breach and appeals) are to be amended so that they are consistent with those in the *Agents Licensing Act 1979*. The two Acts overlap in so far as most licensed auctioneers of land are also licensed or registered under the *Agents Licensing Act 1979*.⁵

² Daily Hansard, *Day 2 – Wednesday 14 August 2019*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/753834>, p.1

³ Committee Transcript, Public Briefing, 21 August 2019, p.2

⁴ Committee Transcript, Public Briefing, 21 August 2019, p.2

⁵ Statement of Compatibility with Human Rights, *Statute Law Revision and Repeals Bill 2019 (Serial 99)*, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.1

3 Examination of the Bill

Introduction

- 3.1 The Law Society NT raised concern regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003*. The following discussion considers the matters raised by the Law Society NT and the subsequent advice provided to the Committee by the Department of the Attorney-General and Justice (the Department).

Repeal of Personal Injuries (Civil Claims) Act 2003

- 3.2 Clause 57 of the Bill provides for the repeal of the *Personal Injuries (Civil Claims) Act 2003*. Enacted as part of a suite of tort law reforms, the Law Society NT noted that this legislation was:

passed by the Legislative Assembly at a time when all Australian jurisdictions were responding to public concern about increasing public liability and other insurance costs and the potential contribution of litigated claims to those increased costs. There was a key focus on facilitating resolution of claims before legal proceedings were filed, and on striking a balance in relation to the costs of proceedings.⁶

- 3.3 However, as highlighted in the Explanatory Statement, most of the provisions of the *Personal Injuries (Civil Claims) Act 2003* have not been commenced:

the operation of the Act depended on rules of court being made. No such rules have been made with the Supreme Court issuing practice directions that seek to achieve, in part, what the Act sought to achieve.⁷

- 3.4 With regards to the latter, the Law Society NT pointed out that the Supreme Court's Practice Direction 6 of 2009 (PD6) only applies to the Supreme Court – there is no equivalent process for claims in the Local Court. Moreover, while section 11 of the Act requires parties to engage in genuine negotiation attempts before filing a claim with the Courts:

PD6 only requires that the parties exchange correspondence prior to litigating, and compliance with PD6 is not mandatory or enforceable (instead only indicating costs consequences at the conclusion of litigation). Compared to the scheme provided by the Act, PD6 does not have the scope or ability to assist in true pre-action resolution.⁸

- 3.5 Given that it has now been 10 years since PD6 was introduced, the Law Society NT advised the Committee that it has recently written to the Chief Justice to suggest that consideration be given to a review of PD6:

One issue that emerged during consultations by the Society about the current operation of PD6 raised the issue of whether or not PD6 should be elevated to the status of a Rule under the Supreme Court Rules. The future of PD6 may also be influenced by the Act, and whether further action can be taken to create a consistent, uniform process for personal injury claims across all courts.⁹

⁶ Law Society NT, Submission 1, p.1

⁷ Explanatory Statement, *Statute Law Revision and Repeals Bill 2019 (Serial 99)*, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.12

⁸ Law Society NT, Submission 1, p.1

⁹ Law Society NT, Submission 1, p.2

- 3.6 Acknowledging that implementation of the *Personal Injuries (Civil Claims) Act 2003* would require the Supreme Court and Local Court to make Rules pursuant to Part 2, Division 2 of the Act, the Law Society NT advised the Committee that it is prepared to advocate further with the Courts to achieve this and deliver the Northern Territory a claims system that brings it into line with those currently in place elsewhere in Australia, noting that:

The failure of the Act to be commenced represents a missed opportunity to create a cohesive scheme for personal injury claims, which would serve to foster access to justice and to reduce the burden on our Court system. For the Northern Territory to repeal the Act would be a retrograde step; the Society would instead encourage commencement of the Act and its implementation. ... For these reasons the Society submits to the Scrutiny Committee should give consideration to recommending that the Bill be amended to omit Clause 57 before it is passed.¹⁰

- 3.7 In responding to the Committee's questions regarding the issues raised by the Law Society NT, the Department noted that it had:

consulted with the Chief Justice before developing any amendments. The Chief Justice, on behalf of himself and the other judges, supported the repeal of the legislation. After the legislation was introduced the Department wrote to the Law Society Northern Territory and the Northern Territory Bar Association advising them of the introduction of the Bill and drawing their attention to the repeal of the Act [*Personal Injuries (Civil Claims) Act 2003*]. The Department also advised them that the Bill was being considered by the Social Policy Scrutiny Committee.¹¹

- 3.8 While acknowledging that PD6 is neither mandatory nor enforceable in a legal sense, the Department pointed out that:

In practice it is effectively treated as mandatory and repercussions can be severe. It can lead to having costs orders ordered against the lawyer's client – which in turn could lead to complaints to the Law Society. ... The relevant judicial officer will often order compliance with PD6 at pre-trial mentions and if not complied with there are consequences for the guilty parties. Not only that but the Court considers all parties are under an obligation to attempt to settle claims prior to litigation and under a duty to assist the Court managing cases to that end (and the contents of that duty are set out in PD6).¹²

- 3.9 In relation to the Law Society NT's concern that there is no formal pre-claim action in the Local Court, the Committee heard that very few personal injuries claims are actually dealt with by the Local Court. The Department also pointed out that former Chief Judge Lowndes considered that a practice direction or rule similar to PD6 may disadvantage non represented parties; making it more difficult for them to properly handle a matter.¹³ Nevertheless, it was further noted that:

It is the practice of some practitioners to seek to apply similar principles to PD6 in Local Court proceedings (usually referred to as being in the spirit of PD6).¹⁴

¹⁰ Law Society NT, Submission 1, p.2

¹¹ Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.5

¹² Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.4

¹³ Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.4

¹⁴ Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.4

3.10 With regards to the extent to which PD6 fulfils the objectives of the *Personal Injuries (Civil Claims) Act*, the Department advised the Committee that:

The Government accepts that PD6, for the Supreme Court, achieves most of the outcomes of the Act. Attached at Attachment A is a table comparing the provisions of the Act with the provision of PD6. This table shows that PD6 has much of the same general content as the Act. Any difference in the operation of the Act and the operation of PD6 is considered by litigation lawyers of the Department of the Attorney-General and Justice to be marginal practical impact.

For the Local Court it is understood that former Chief Judge Lowndes has taken the view that a practice direction or rule along the lines of PD6 would make it more difficult for non represented parties to properly handle a matter. Additionally, there are very few personal injuries matters dealt with by the Local Court.

For the reasons set out above the Department of the Attorney-General and Justice is satisfied that PD6 is achieving the substantive aims of the legislation. The Department believes that the Supreme Court Judges accept the policy objectives of the Act and that they are in a position to achieve the objectives of the Act.

Nonetheless, in light of the Law Society's submission, the Hon Gerry McCarthy MLA, Acting Attorney-General and Minister for Justice, will write to the Hon Chief Justice Michael Grant and Her Honour Chief Judge Elizabeth Morris seeking their comments on the issues raised. ... If either of them suggests that there is a practical need to retain any of the provisions of the Act, the Government will reconsider its position.¹⁵

Committee's Comments

3.11 The Committee is satisfied with the Department's advice. While the Department expressed the view that PD6, as a current substitute for the Act, appears to be working well¹⁶, the Committee notes that the Acting Attorney-General and Minister for Justice, the Hon Gerald McCarthy MLA, has undertaken to write to the Chief Justice and the Chief Judge and seek their comments on the issues raised by the Law Society NT. Should either the Chief Justice or Chief Judge suggest that any provision of the *Personal Injuries (Civil Claims) Act 2003* ought to be retained, the Department further advised that the Government will reconsider its position regarding the proposed repeal of the Act.

3.12 However, to ensure that the Assembly is appropriately informed, the Committee is of the view that the Attorney-General and Minister for Justice should table the responses from the Chief Justice and Chief Judge regarding the proposed repeal of the *Personal Injuries (Civil Claims) Act 2003* in the Assembly prior to or at the time of the second reading debate.

Recommendation 2

The Committee recommends that, to ensure the Assembly is appropriately informed, the Attorney-General and Minister for Justice table the responses from the Chief Justice and Chief Judge regarding the proposed repeal of the

¹⁵ Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.5

¹⁶ Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>, p.6

Personal Injuries (Civil Claims) Act 2003 in the Assembly prior to or at the time of the second reading debate.

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Law Society NT

Public Briefing – 21 August 2019

Department of the Attorney-General and Justice

- Robert Bradshaw: Director Policy Coordination

Note

Copy of the submission received and the transcript from the public briefing are available at:
<https://parliament.nt.gov.au/committees/spsc/97-2019>

Bibliography

Department of the Attorney-General and Justice, *Response to Written Questions*, 24 September 2019, <https://parliament.nt.gov.au/committees/spsc/99-2019>

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Explanatory Statement, *Statute Law Revision and Repeals Bill 2019 (Serial 99)*,
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Personal Injuries (Civil Claims) Act 2003 (NT)

Statement of Compatibility with Human Rights, *Statute Law Revision and Repeals Bill 2019 (Serial 99)*, <https://parliament.nt.gov.au/committees/spsc/99-2019>

Statute Law Revision and Repeals Bill 2019 (Serial 99),
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Supreme Court of the Northern Territory, *Practice Direction No. 6 of 2009 – Trial Civil Procedure Reforms*,
http://www.supremecourt.nt.gov.au/lawyers/documents/6_of_2009_Trial_Civil_Procedure_Reforms.pdf