



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Courts Legislation Amendment Bill 2019

Tuesday 29 October 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Mr Tony Sievers MLA, Chair, Member for Brennan
Mr Jeff Collins MLA, Member for Fong Lim
Mr Lawrence Costa MLA, Member for Arafura
Mr Gary Higgins MLA, Member for Daly (via teleconference)
Mrs Kate Worden MLA, Member for Sanderson

Witnesses:

Department of the Attorney-General and Justice
Jenni Daniel-Yee, Director, Legal Policy
Henrik Hartmann, Policy Lawyer, Legal Policy

The committee convened at 1.23 pm.

COURTS LEGISLATION AMENDMENT BILL 2019

Department of the Attorney-General and Justice

Mr CHAIR: On behalf of the committee I welcome Jenni and Henrik to the committee today. To the public briefing into the *Courts Legislation Amendment Bill 2019*. We do welcome to the table to give the evidence to the committee Ms Jenni Daniel-Yee, Director, Legal Policy Solicitor for the NT and Mr Henrik Hartmann, Policy Lawyer, Department of the Attorney-General and Justice. I will introduce our committee, we have Mr Jeff Collins, Member for Fong Lim, Mrs Kate Worden, Member for Sanderson, myself obviously and Mr Gary Higgins is on the phone, the Member for Daly.

Thank you for both for coming before the committee today. We do appreciate you taking the time to speak to the committee and we look forward to hearing from you both today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply. This is a public briefing and it is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also.

If at any time during the hearing you are concerned that what you will say should not be made public then you may ask that the committee go into a closed session and take your evidence in private.

For the purpose of Hansard could you each please state your name and the capacity in which you are appearing here today. Then I think Jenni are you going to make an opening statement, or Henrik again? Jenni if you would like to state your name and title.

Ms DANIEL-YEE: Jenni Daniel-Yee, Director, Legal Policy, Department of the Attorney-General and Justice.

Mr HARTMANN: Henrik Hartmann, Policy Lawyer, Department of the Attorney-General and Justice.

Mr CHAIR: Thank you. Henrik would you like to make an opening statement?

Mr HARTMANN: Since 2016, the government has been working on Project Veritas, which is a major project to modernise the Integrated Justice Information System. A component of that work is Project Odyssey which will enable the electronic document and case management within the courts and the NTCAT.

The aspects of Odyssey are mostly operational, involving equipment modernisation. However, a number of minor legislative questions have been identified during that process which could cause uncertainty. As uncertainty is highly undesirable in the court environment, these would require addressing before the electronic filing and case management can be fully commenced. Which brings us to this Bill.

It draws together minor amendments to the *Administration and Probate Act*, the Electronic Transactions (Northern Territory) Regulations, the *Local Court Act* and the *Supreme Court Act*.

It should be noted that these amendments are intended to eliminate all possible doubt and it is expected that Odyssey would be workable without them, but as there should not be any uncertainty in the court process, it is considered desirable to tidy up these minor issues. The Bill coincides with the intended implementation of electronic filing and service in March 2020.

The intention is for the courts to make their own rules about how electronic filing and service will work and to develop their own processes. Many of the amendments in the Bill are concerned with ensuring that the courts are able to do so, or clarify that the courts' own processes will take precedence where there is any remaining uncertainty.

The provisions relating to these rules are modelled on those in Victoria and section 24B of the Victorian *Supreme Court Act 1986*, which will enable the court to electronically issue or transmit court and other documents.

Even where other laws might require them to be issued physically or manually, or transmitted by manual means, the intention is that this provision will allow the courts to supersede that and provide them through

electronic means where they deem it appropriate. This is in effect a backstop provision to ensure that all orders, judgements or other processes can be transmitted or utilised electronically and that manual requirements would still be met by that process.

The *Administration and Probate Act* meanwhile deals primarily with wills and other testamentary documents and the law surrounding these kinds of documents has often placed strict requirements on having original, physical documents in place. That has largely been kept in place but to facilitate electronic filing in some smaller cases, particularly where there are small or less formal estates, the court may modify its rules in these respects to permit electronic filing where it considers it appropriate to do so.

The Electronic Transactions (Northern Territory) Regulations has also been amended so that the electronic filing and service system that will require court users to receive and sign documents electronically can take place. The amendment has made so that the rules or processes of the court will prevail over the purposes of the *Electronic Transactions (Northern Territory) Act 2000*.

Consideration has also been given to a situation where requiring a person to use electronic filing would be disadvantaged—for example where the person does not necessarily have regular access to a computer. The approach taken allows the court discretion in its rules and processes so if it considered that it would disadvantage a particular person, they can dispense with electronic judgment, if it is in the best interest of justice. This is a case-by-case matter and a procedural matter for the courts.

The other main component deals with the electronic case management system for the courts and amends the *Local Court Act* and the *Supreme Court Act* when dealing with the stamps and seals of the court. These are very old-fashioned and, of course, were created significantly before it was contemplated that they might be electronic. It treats the stamp and seal of the court very much as a physical object which is affixed to a real document. The language is very much out-of-step with what we are intending with moving forward. Consequently the language and amendments have been made to remedy this so that the stamp can be a physical item attached to a document or it can be a virtual mark that is attached to an entirely electronic document.

These proponents are minor and largely technical but they support the objective of the electronic filing and case management project and will assist government in providing a modern and effective court system.

I would like to thank the drafters from the Office of Parliamentary Counsel for their assistance.

Mr CHAIR: Well done Henrik.

Mr COLLINS: It is all about filing, it is not about service as well?

Mr HARTMANN: Electronic service will be a component of that.

Mr COLLINS: By the court or by parties as well?

Mr HARTMANN: Both.

Mr COLLINS: By both? Okay.

Mr HARTMANN: Yes.

Mr COLLINS: I take it is similar to the federal court and federal circuit court?

Mr HARTMANN: I believe so, yes.

Mr CHAIR: Great. Kate?

Mrs WORDEN: No, I am clear on this one.

Mr CHAIR: The question that comes to my head is the security around these documents.

Mr HARTMANN: That is an operational concern of the Veritas project itself and how documents will be transmitted back and forth. As I understand it, the seals, markings and electronic signing, as you would for any other kind of document, have been incorporated into that. That is a consideration but not one that is covered by the Bill.

Mr COLLINS: Right. So many other jurisdictions have been doing it for a while.

Mr CHAIR: Thanks, Jeff. All right. That is it from me. Oh, I suppose, consultation—have you done ...

Mr HARTMANN: The courts are doing their own consultation with regard to the rollout of the project. We have not consulted with the public on the Bill in general but we have liaised with the courts and worked with them in developing these amendments.

Mr CHAIR: Gary, do you have any questions?

Mr HIGGINS: No, not really, other than what effect will it have on ordinary Territorians? I do not think it will have much, is it?

Mr HARTMANN: The Bill itself will not, it is the implementation of the electronic case management system that will be quite dramatic, and the courts are rolling out in stages and providing a lot of public consultation on how that will occur.

Mrs WORDEN: The service of documents?

Mr HARTMANN: Yes, how that process will occur moving forward.

Mr COLLINS: Okay, but it can still be done physically?

Mr CHAIR: Manually.

Mr HARTMANN: Yes.

Mr COLLINS: You will walk into the court and file your document. If you are a self-represented litigant, you can still ...

Mr HARTMANN: As I understand it, at some point that will rollover to being a required electronic filing, but at this stage this does not occur until March 2020 at the earliest. There is a staged process after that.

Mrs WORDEN: You might want to talk to some of the senior groups about that—the number of people who are not on the electronic out there. You would be surprised—a lot of people. We cannot make that presumption. There are even young people who are saying, 'I do not use those platforms. I do not use email.' It is surprising.

Mr HIGGINS: Have we given any consideration, then, of the impact on some of the Indigenous people? A lot of the places outside of Darwin do not even have good communication. Berry Springs and Dundee have pathetic communications. How will that be affected?

Mr HARTMANN: That is very much an operational question for the project team and how that is being rolled out. This Bill certainly does not address any of those, apart from that consideration that has been given to allowing the courts discretion where electronic filing will not be a viable option.

Mrs WORDEN: Could we get something that addresses that in writing from the department?

Mr HARTMANN: I can take it on notice. I can find out.

Mrs WORDEN: That would be very useful, because Gary raised a very good point. That had not even come into my thinking about people in remote areas and how that might affect someone who chooses to represent themselves and they have no access to those services. At which point does that kick in and allow them not to use the import? Can we just have some clarification in writing?

Mr COLLINS: Do you think it is going to include service as well?

Mrs WORDEN: Yes.

Ms DANIEL-YEE: Also noting that if ...

Mr HIGGINS: Okay.

Ms DANIEL-YEE: ... you were to represent yourself in a remote area, I presume you would now have to come into court to file all your documents.

Mr COLLINS: That is right. That is with filing.

Mrs WORDEN: (inaudible) now.

Mr COLLINS: But with service, if you are to be served something electronically and these people are in an Indigenous remote community, that is a real problem. But that is something for us to look at going forward, I suppose.

Mrs WORDEN: That is the point. If you put it in an email, it ...

Mr HIGGINS: Sorry. I would really want to see how their will cover it with courts that are out in, say, Wadeye, and you have one Telstra tower which, quite often, goes down. What will we be doing there? What is their plan there? That is the sort of thing that worries me with all of this going to electronics.

I spent the weekend out at Uluru and the tower down there went down and there was total chaos. It was not the first time it has happened and it is similar to all of the stuff that has occurred out in these remote areas. It is always a worry of mine that we just swap everything to electronics without looking at the communication side. I know that is not a Territory government responsibility, but the issue is that something is just not working outside of Darwin, Katherine, Tennant Creek and Alice Springs. It is just continual failures and it is a real worry.

I am glad Kate agrees with that as well. It is a concern.

Mr HARTMANN: I would need to seek some clarity from the project Veritas team about how they are addressing that particular issue. I do know that the roll out is staged and so this is only applying to civil matters at this stage. Criminal filing and service will not roll out until 2021, I believe.

Mrs WORDEN: Gary, I do not know about you but my electorate office is full of people that are not in the electronic age that are coming in and seeking assistance.

Mr HIGGINS: Yes, you are dead right.

Mrs WORDEN: I would be considered an urban seat. You would be surprised, the biggest amount of people that I assist are seniors, and it is a choice. They are choosing that that is not something they wish to do, but I am always surprised by the younger people that come in that do not, so I think that it is important that if we are going this way that there is always mechanisms that are there. If this fully went electronic we are probably going to be in some strife.

Mr CHAIR: The committee would welcome some information on those contingencies and how that will work. That would be great.

Any other questions before we wrap up?

Jenni and Henrik thank you again for attending today. We look forward to receiving that information and any other questions we will certainly be in touch. Thank you very much.

The committee concluded
