

2018

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

CHIEF MINISTER

**Public Information Legislation Amendment Bill 2018**

**SERIAL NO. # 77**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

This Bill amends the *Public Information Act* to provide for a strengthened, simplified and pragmatic approach to ensuring public funds are used appropriately when providing information to the public. In summary, the Bill operates to:

- a) consolidate obligations spread across the Act and Regulations to ensure all obligations are contained in a single section of the Act;
- b) strengthen requirements in relation to information containing facts, statistics and data by removing any inconsistencies created by using different terminology across the Act and Regulations;
- c) increase consistency in application across Government by redrafting commonly misinterpreted obligations, including incorporating the obligation to distinguish a statement of facts from statement of comments (which raises complex academic and theoretical matters such as subjectivity versus objectivity, fact versus fiction, reality versus belief, and assessments versus assertions) into other more definitive obligations;
- d) remove unintended prohibitions on the use of images of a Minister by introducing a contemporary and technology-neutral definition of advertisement that means published by the purchase of media placement under a commercial arrangement;
- e) insert a restriction on the use of images of a Minister in information other than advertising by requiring that a Minister must have a 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);
- f) expand the operation of the Act to prohibit the use of a Minister's message in the same circumstances where it would be a contravention to use the image of a Minister; and
- g) improve the practicality and usability of the Act by introducing a public purpose test for the content of public information to replace the requirement for compliance only with criteria specified in the Regulations.

## **NOTES ON CLAUSES**

### **Clause 1. Short Title**

This clause provides for the citation of the Act as the *Public Information Legislation Amendment Act 2018*.

### **Clause 2. Commencement**

This clause provides that the Act will commence on the day after the day the Administrator's assent to the Act is declared.

### **Clause 3. Act amended**

This clause provides that the Act seeks to amend the *Public Information Act*.

### **Clause 4. Section 6 amended (Review of public information)**

This clause clarifies the core obligations in relation to public information including combining obligations in section 6(2) and 6(2A) with those in the Regulations to allow for more transparent and intuitive application.

Section 6(2)(c) provides that an advertisement that includes an image of a minister or a minister's message will be a contravention. In contrast to section 6(2)(d), this restriction applies to all ministers. This obligation has been expanded to also capture a minister's message where previously it only applied to the image of a minister.

Section 6(2)(d) provides that for public information that is not an advertisement, an image of a minister or minister's message can only relate to a minister with a sufficient connection to the content of the information. Such ministers are the Chief Minister whose responsibility extends across all portfolios, or a relevant Minister. A new definition of relevant minister is inserted to mean the minister to whom responsibility for the area of government related to the public information under the Administrative Arrangements Order.

To further clarify the operation of section 6(2)(c) and (d), advertisement has been defined to mean an advertisement published by the purchase of media placement under a commercial arrangement. The definition ensures that developments in technology and advertising practice are captured, for example, boosting social media posts, while ensuring that undue restrictions are not inadvertently applied to communications such as the distribution of annual reports or publication of photos of recognition awards on internal agency intranet pages or newsletters.

Section 6(2)(e) and 6(2)(f) introduces obligations similar to those previously contained in the Regulations. These new obligations are expanded to apply to facts, statistics and data.

The note for section 6(2)(f) explains that for operational and logistical reasons, a means for identifying the source may include providing a contact person or website that can provide references.

Section 6(2A) is amended to provide that the Auditor-General may determine the Act is contravened if satisfied that the content of the particular public information is not for the purpose of the public interest.

Sections 6(5) and 6(6) are amended to clarify that they apply despite sections 6(2)(c) and 6(2)(d). Minister with a capital 'M' is replaced with minister in relation to both an image of a minister and a minister's message.

### **Clause 5. Regulations amended**

This clause provides that the Act seeks to amend the Public Information Regulations.

#### **Clause 6. Regulations 3 and 4 replaced**

This clause removes regulations 3 and 4 and a new regulation 3 inserted. Regulations 4(a) and (c) have been clarified and included in section 6(2). Obligations requiring an assessment of objectivity versus subjectivity have been removed, and regulation 4(b) has been incorporated into a broad obligation not to be misleading. Regulation 3 provides that, for the purpose of section 6(2A), without limiting the meaning of public interest, the Auditor-General may consider particular information to be in the public interest if the information has a purposes including any of the matters listed in regulation (3)(a) to (3)(k). Regulations 3(a) to 3(g) and 3(i) to 3(k) reproduce criteria listed in the current Regulations.

In addition to reinserting the matters previously listed in regulation 3, a new purpose of informing the public of new, existing or proposed government programs, policies or projects is inserted in regulation 3(h).

#### **Clause 7. Repeal of Act**

This clause provides that the Act is repealed on the day after it commences.