



Plain Language Summary for Bill 22: Legislation Act

The Government of the Northwest Territories' (GNWT) Department of Justice is proposing a new Act called the *Legislation Act*. The *Legislation Act* sets out comprehensive rules about the processes for enacting, certifying, and publishing laws in the Northwest Territories and for ensuring laws remain up to date. This will consolidate existing provisions about these processes that are found separately in several statutes, and will update and modernize current practices.

Primary legislation is created by passing Bills through the Legislative Assembly. Regulations are delegated legislation that are created under the authority of the primary legislation. Regulations are used to carry out the intent of the Bill and are made by the executive branch of government rather than by the Legislative Assembly. The Legislative Assembly has created a legislated process to oversee the exercise of delegated legislation (regulation-making process). The regulation-making process is set out in the *Statutory Instruments Act* and its regulations and it is supplemented by a variety of other enactments, including the *Interpretation Act*, the *Statute Revision Act*, the *Public Printing Act*, and the *Legislative Assembly and Executive Council Act*.

The current definition of a "statutory instrument" in the Northwest Territories is outdated and complicated. Several other Canadian jurisdictions have modernized legislation regarding regulations to simplify their own definitions and processes. Five other Canadian jurisdictions, including Nunavut, have moved toward a combined approach by incorporating both legislation governing regulations and certain areas of their approach to making primary legislation in a single act. This makes the rules easier to read and understand.

The purpose of the new Act is:

- To follow the trend in Canada by replacing the *Statutory Instruments Act* with a more modern *Legislation Act* that clearly sets out the territorial regulation-making process, as well as provisions related to the making of statutes;
- To replace the *Public Printing Act*, which authorizes the publication of the *Northwest Territories Gazette* and provides for the appointment of the Territorial Printer, with a new *Territorial Printer Act*, to align more closely with current practice;
- To make related amendments to the *Interpretation Act* and the *Legislative Assembly and Executive Council Act*; and
- To repeal the *Statute Revision Act* and set out rules with respect to the revision of enactments in the new *Legislation Act*.

Even though the Act itself is complex, its effect will be to simplify processes and allow improvements to formal oversight and clarity.

The proposed legislation will:

1. Create the office of the Chief Legislative Counsel and set out its powers and duties.
 - The Chief Legislative Counsel will be a lawyer, appointed by the Minister, who is necessary to implement procedures set out by the Act. These include the consolidation of enactments, corrections, and more. This formalizes existing processes, increasing efficiency and accountability.
2. Carry over the office of the Registrar of Regulations and set out powers and duties for that office.
 - The current *Statutory Instruments Act* includes a Registrar of Regulations. Since the *Statutory Instruments Act* is being replaced, the new Act needs to include the Registrar's obligations. All regulations need to go through a Registrar's review. The Registrar registers and publishes regulations. They will also get enhanced correction powers to make fixing minor errors easier.
3. Clarify that information related to legislative drafting is solicitor-client privileged, and that legislative drafters may conduct drafting services for multiple clients.
 - Protecting drafting-related information from disclosure means drafters and clients can communicate freely. This will mean drafters are fully informed and able to create the best possible product. The small population of the Northwest Territories also means drafters need to perform drafting services for multiple clients, including the GNWT and the Legislative Assembly. The new Act will ensure that drafters can perform their duties without being in a conflict of interest.
4. Clarify the types of instruments that are subject to the regulation-making process, through creating a simplified definition of "regulation" and eliminating the definition "statutory instrument." Additional clarifications or simplifications of other definitions are added.
 - Regulations and statutory instruments are both defined in the *Statutory Instruments Act*, and different rules and processes apply to both. But the definitions are confusing, and that makes it hard to know which definition applies and which set of processes to follow.

The new *Legislation Act* will set out clear processes for regulations and allow processes for other types of instruments to be developed in secondary laws, to offer more certainty and decrease the risk of using the wrong process.

5. Set out rules with respect to the application and effect of legislation, and the coming into force and repeal of enactments, and move certain rules with respect to those matters from the *Interpretation Act* to the new *Legislation Act*.
 - The new *Legislation Act* will govern the processes and procedures behind making legislation. It contains some rules specific to the application and effect of legislation and the coming into force and repeal of enactments. Other rules specific to the interpretation of legislation continue to fit well within the existing *Interpretation Act* and will stay there. The *Interpretation Act* and proposed *Legislation Act* will stay separate to reflect current legal practices.

6. Set out rules in relation to the making of Acts, including:
 - a. enacting clauses;
 - b. publication of Acts;
 - c. corrections to Acts; and
 - d. citation of Acts.
 - The new *Legislation Act* will set out rules for making Acts to ensure procedures are consistent and legally sound. This will put into written law some matters that have formerly been managed by convention and modernize some other approaches. New correction powers will be added to make fixing minor errors easier.
7. Move the rules respecting the certification and custody of Acts from sections 59.1 to 59.5 of the *Legislative Assembly and Executive Council Act* into the new *Legislation Act*.
 - Some provisions in the proposed Act are duplicated in the *Legislative Assembly and Executive Council Act* and will be moved to avoid having to look at multiple acts during the legislation process.
8. Update and modernize the territorial regulation-making process, including with respect to:
 - a. the examination of proposed regulations;
 - b. filing and registration of regulations;
 - c. publication of regulations; and
 - d. corrections to regulations.
 - This process already exists but is being updated and modernized. New correction powers are being added to make fixing minor errors easier.
9. Set out rules with respect to the consolidation of Acts and regulations, including:
 - a. the preparation and publication of consolidated legislation; and
 - b. editorial changes and corrections to consolidated legislation.
 - A consolidated Act or regulation is one that includes all amendments right in the original text, making it easier to read and refer to. These are currently only created for convenience, but the *Legislation Act* will make them official copies of law. This enhances digital accessibility, which is important because consolidations are the most accessed format of legislation. It also creates a foundation that would allow for the migration of territorial legislation into a modernized e-laws system when resources allow.
10. Repeal the *Statute Revision Act* and set out rules with respect to the revision of enactments in the new *Legislation Act*, including:
 - a. the preparation of revisions;
 - b. powers of the Chief Legislative Counsel on revision;
 - c. approval and coming into force of revised enactments;
 - d. registration of revised regulations;
 - e. publication of revised enactments; and
 - f. citation of revised enactments.
 - A revision is a re-publication of an existing law with changes such as renumbering, correcting grammar and spelling, and modernizing language. It makes minor amendments to an enactment so that the intent of the Legislature is expressed better, without changing

its legal effect. The *Statute Revision Act* model contemplates a total revision of the entire statute book, but that is a difficult and expensive process that has not been conducted since 1988.

Partial revisions, which contemplate revising legislation in smaller batches, allow for revision work to happen over time with existing resources.

11. Replace the *Public Printing Act* with a new *Territorial Printer Act*, which more closely aligns with current practice.

- The *Public Printing Act* is outdated and has not kept up with technology or current practices. Some changes reflect appointment of the Territorial Printer by the Minister instead of the Commissioner, new duties of the Territorial Printer such as web maintenance, and the ability for the Chief Legislative Counsel to issue directions on certain matters.

12. Amend the *Interpretation Act* to:

- a. allow regulations to incorporate documents by reference; and
 - b. modernize the use of forms.
- Incorporating documents into regulations by reference reduces the length of legislation and saves drafting time. Many NT statutes already allow for this, but a general provision in the *Interpretation Act* will serve to update this for older statutes.

Many older NT statutes include regulation-making powers that allow for forms to be set out in the regulations, but the modern trend is to instead have the regulations specify a person who can approve a form. These older statutes would benefit from the inclusion of a general provision in the *Interpretation Act* that modernizes the use of forms.

The Department of Justice engaged with various parties during the development of the new Act, including with Indigenous Governments, the Courts, and the Law Society.

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