



## Feedback to the Legislative Scrutiny Committee on the Territory Coordinator Bill 2025

19 January 2025

### About ECNT

The Environment Centre NT (ECNT) is the peak community sector environment organisation in the Northern Territory, raising awareness amongst community, government, and industry about environmental issues, and supporting community members to participate in decision making processes and action.

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**Submitted to:**

Department of the Chief Minister and Cabinet

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## Executive Summary

1. Consultation on the *Territory Coordinator Bill 2025 (the Bill)* to date has been inadequate. ECNT is concerned that the failure of the Northern Territory Government to disseminate accurate and transparent information about the nature of submissions received in the consultation on the draft Bill has led to a mischaracterisation of community sentiment, and concealment of which stakeholder interests have been addressed in the Bill. In the interests of transparency and robust public consultation, we request the Legislative Scrutiny Committee conduct public hearings into the Bill.
2. The Bill undermines existing environmental protections and introduces significant uncertainty into approval processes. It aims to streamline decision-making but, in reality, will likely lead to confusion, poor social and environmental outcomes, and protracted legal challenges. In particular, ECNT is concerned that the Bill:
  - a. Could have far-reaching and unforeseen consequences, due to the wide range of laws that could be overridden by a decision-maker;
  - b. Reduces scope for community input in decision making by deteriorating rights for review of decisions.
  - c. Represents an overreach of power, vesting significant decision-making power in an unelected bureaucrat and a single minister, which currently is the Chief Minister;
  - d. Could put at risk things that Territorians value, like our environment, lifestyle, and health, by weakening legislative protections that are designed to safeguard these things;
  - e. Contains an ill-defined ‘primary principle’ that does not adequately reflect the genuine interests of Territorians;
  - f. Undermines existing regulatory processes that are already under-resourced;
3. We strongly recommend against the passing of the Bill.
4. In the event that the Government decides to proceed with the Bill, we suggest at minimum the following changes:
  - a. **Remove the powers to issue ‘step in’ and exemption notices:** these powers create significant uncertainty and the possibility for complex, unintended legal interactions.
  - b. **Better access to information:** Notices designating certain projects or development areas as ‘significant’ should be required to be published in an easily accessible online location, such as the Office of the Territory Coordinator’s website.
  - c. **Better recognition of interests outside industry:** The definition of “interested party” should include a category for a person or organisation whose functions, interests or activities may be affected by actions in the area.
  - d. **Better review rights:** merits review is fast and affordable. Using this Bill as a back-door way to remove the merits review rights that exist under numerous other laws will lead to the undesirable outcome of parties being forced to bring lengthy, expensive judicial review cases in order to protect their legitimate interests.



- e. **Statutory timeframes for public consultation:** public consultation should occur for all consequential decisions made by a Minister or TC, including the declaration of a significant project or TDA, or when a step-in or exemption notice is declared. Public consultation should occur according to a well-defined and publicised process and include statutory timeframes.

## How the bill works

5. The Bill creates the office of the Territory Coordinator, with the primary objective of “driving economic development for the Territory”. The Bill makes it clear that economic development takes precedence, with social and environmental considerations being secondary.
6. The Territory Coordinator has wide-ranging powers to accelerate significant projects, including the ability to issue an “exemption notice” to suspend or modify the operation of legislation that would affect the project in question.
7. The Bill gives powers to both the Territory Coordinator (**TC**), and the Minister (not defined in the Bill). The TC and the Minister can designate certain projects or areas as significant, which enlivens the powers to accelerate those projects. There are no limitations in the Bill on area including Aboriginal land and waters. The criteria for designation as a significant project is open-ended and vague, including projects that are of economic significance, complex in nature, or meeting criteria prescribed by regulation.<sup>1</sup>
8. Once a project, program, or development area has been designated as significant, the TC and Minister have broad powers to request that the responsible public entities take certain actions to accelerate it. The TC can request prioritisation, progression (steps to be taken within a certain time frame), or that a decision be made within a timeframe. Public entities have a duty to cooperate with the TC.
9. The Bill affects a large number of laws. The TC has the power to affect decisions made under all the Acts listed in the Schedule. These include the *Water Act 1992*, *Territory Parks and Wildlife Conservation Act 1976*, *Planning Act 1999*, *Pastoral Land Act 1992* and the *Environment Protection Act 2019*, among many others.
10. Of most concern are the “step-in” and exemption powers. The TC or Minister can issue a notice to a statutory decision-maker, advising that the TC will step in to make the decision.<sup>2</sup> The TC then becomes the responsible entity for the decision or process and has all the powers of the responsible entity under the relevant law. The Bill excludes review of, or appeal against, the TC’s decision, including the review rights that existed under the relevant law. This means that those affected by a decision will have only the narrow and expensive avenue of judicial review left open to challenge a decision.
11. The TC also has the power to issue an exemption notice, to modify or exclude the application of a relevant law in order to facilitate a project. There are startlingly few checks

<sup>1</sup> *Territory Coordinator Bill 23(1)*

<sup>2</sup> *Ibid* cl 56, cl 57(2).



on this power, despite its potential to substantially undermine laws that protect the environment, water, and natural values of the Territory.

## Legal issues

### ***The Bill creates significant uncertainty and complexity***

12. The Bill's capacity to undermine a wide suite of Northern Territory legislation is unprecedented and deeply concerning. Good governance is premised on stability and certainty of outcome, not ad-hoc decisions that change the application of established laws.
13. The step-in notice is one example. In Queensland, the Coordinator-General has "step-in" powers in certain cases.<sup>3</sup> But the Coordinator-General, when making a decision, is bound by the usual criteria for making the decision under the relevant law.<sup>4</sup> There is no overriding principle that fundamentally changes the focus of the decision. The Territory Coordinator bill, in contrast, proposes a confusing mix of powers and priorities. It states that the TC will have "all powers of the responsible entity under the relevant law,"<sup>5</sup> (and those powers will be both defined, and limited by, the relevant law) but the Bill also requires that the TC have regard to the overriding "primary purpose" of driving economic prosperity for the territory. This means that whenever the TC "steps in" to make a decision under another law, that law's operation is substantially, but temporarily altered. This makes it very difficult for affected parties to predict how the relevant laws will apply in any given scenario.
14. Further, cl 95(1) aims to exclude the review rights that a person would ordinarily have under the relevant law. Merits review processes provide an accessible way for people affected by a decision to apply for a review of that decision. Further, merits review looks at the relevant facts and information to determine whether a decision was correct. Done properly, it improves the quality of decision-making by amending or overturning rushed, capricious or incorrect decisions. Judicial review is much narrower and will not necessarily be available, even if a decision is badly made.
15. The exclusion of merits review in the context of step in notices significantly alters the rights of affected parties under a wide range of other Territory laws. It pushes anyone who is dissatisfied with a decision to either give up, or take to the courts for a judicial review of the decision (which only considers whether the decision was made in accordance with law, and not whether it is the correct and preferable decision). It will shut many people out of the process, but increase the likelihood that those who remain will pursue costly, time-consuming and unsatisfactory judicial review processes.
16. At an information session on 18 December in Palmerston, feedback was sought on whether the Bill should interact with the *Heritage Act 2011*. It is disappointing that community feedback was disregarded, and the *Heritage Act* has been included in the Bill's

<sup>3</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 76K.

<sup>4</sup> *Ibid* s 76N(1)(b).

<sup>5</sup> *Territory Coordinator Bill 2025* cl 71(b).



schedule, and we recommend it should be removed since its inclusion would further add to legal complexity and uncertainty of the Bill.

### ***Interference with bilateral agreements***

17. The Draft of the Bill included provisions that the TC may not exercise a power in a way that would interfere with an agreement between the Territory and the Commonwealth. It also prevented exemption notices being issued in relation to statutory decisions that involve the requirements of the *Environment Protection Act 2019* as they relate to bilateral agreements. These carve outs are presumably aimed at ensuring that the Northern Territory adheres to the terms of its Bilateral Agreement with the Commonwealth, made under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). The agreement sets out certain requirements for environmental assessment. The NT has agreed to meet those standards, and in return, projects assessed in the agreed way will not require further assessment under Part 8 of the EPBC Act.
18. The fact that these provisions have been removed risks breaching the Northern Territory's obligations under the Bilateral Agreement. Because of the way different approval and assessment processes overlap and intersect, it will be difficult for agencies and the TC to understand exactly where the risks will arise. Legal advice may frequently be required in relation to decisions that could potentially be in breach of the Bilateral Agreement. This will add to the regulatory burden. In attempting to cut corners, the Bill inadvertently creates more complexity.
19. The Bill could also lead to duplication. It is not always clear at the outset whether an activity is a "controlled action" for the purposes of the EPBC Act. If that kind of activity were the subject of a step-in notice, and was approved using the overriding "primary principle", it might later be called in for assessment at the EPBC level. In that case, the Bilateral Agreement would start to apply, but the initial NT assessment would not have been done to the usual standard required. A detailed environmental assessment might then need to be done by the Commonwealth, because it had not been done properly the first time.

### ***Lack of checks and balances***

20. The Bill contains one or two notional safeguards, but they have no real effect. For example, exemption notices must be tabled in Parliament and may be disallowed.<sup>6</sup> The unicameral structure of the NT's parliament means that whichever party holds the majority in the Legislative Assembly will be both tabling the notices, and aiming to pass them, making it extremely unlikely that a notice would ever be disallowed. The tabling of the notice will also be the first opportunity for the public to become aware of it.
21. The discretion to issue exemption notices is very broad. The TC "may" consult with persons who the TC considers may be affected by the proposed exemption notice, but there is no obligation to do so.<sup>7</sup>

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<sup>6</sup> *Territory Coordinator Bill 2025* cl 82.

<sup>7</sup> *Ibid* cl 80(2).



22. The extent and duration of the exemption is also not subject to any limits: the application of the relevant law is modified or excluded in the matter specified in the notice.<sup>8</sup> There is no requirement that it be for a fixed time period, nor is there any mechanism for challenging an exemption that is broader than necessary. It should also be noted that the Queensland Coordinator-General, on which the TC is modelled, has no power to issue exemption notices. This Bill goes further than the Queensland equivalent.
23. As mentioned above, the Bill makes no provision for merits review and removes the review rights in other Acts when a step-in notice is issued. The Bill's general approach appears to be intended to deter litigants, but this is short-sighted. Good accountability measures, provision of information to the public, and fair, fast merits review: all are ways to ensure good decisions are made and to strengthen public faith in government. Paradoxically, the Bill's wide-ranging effect on various existing laws creates a considerable amount of legal uncertainty. This could lead to legal challenges or duplication of processes, rather than the intended streamlining effect.

## Additional Concerns with the Bill

### ***The Bill is an overreach of power***

24. If passed, the Bill would represent a threat to democratic processes and institutions in the Northern Territory. Taking decision-making power away from independent statutory decision makers and centralising this power with an unelected bureaucrat and a single Minister is anti-democratic overreach. Independent statutory regulators like the NT Environment Protection Authority (NTEPA) each have their own independent rationale for existing, in the case of the NTEPA being to scrutinise and regulate proposals that have the ability to have a significant impact on the environment. The NTEPA does not only assess impacts to water, biodiversity, and climate, but also health, culture, the Territory's economy and demography, and public safety. Exempting, undermining, and fast-tracking NTEPA processes amounts to the removal of appropriate checks and balances that not only threatens good decision-making but democratic process more broadly.
25. As described above, the Bill goes beyond what is proposed in other jurisdictions in Australia such as SA and QLD and represents a unique and dangerous attempt to override deliberative process and concentrate power. The overreach of powers represented in the Bill and the inclusion of powers not included in other jurisdictions threatens to undermine the social license of decisions made by the Territory Coordinator.

### ***The Bill weakens safeguards designed to protect the Territory's environment, health, and lifestyle***

26. ECNT foresees that the ultimate consequence of the Territory Coordinator office will be to put the water, nature, environment, climate, health, and culture of the NT at risk.

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<sup>8</sup> Ibid cl 68.



27. The NT already faces enormous risks and impacts to our environment, from the over-extraction of water to the expansion of the fossil fuel industry and its associated greenhouse gas emissions. This legislation would weaken the little existing oversight or scrutiny of these projects, potentially removing in certain instances the need for public consultation or environmental assessment processes that often represent the only chance communities have to engage with these projects and their potential risks.
28. To take one example that is used in the explanatory guide to the bill, a 'Territory development area' may be declared in an area hosting "multiple onshore gas developments operated by multiple companies". Once a Territory development area has been designated, the Territory Coordinator can authorise access onto that land, including bringing equipment and machinery onto the land, without the consent of the owner or occupier. In the case of this example, the powers vested in the Territory Coordinator threaten to undermine the findings and recommendations of the Pepper Inquiry into Hydraulic Fracturing that established a range of principles and best-practice guidelines for the introduction of a fracking industry in the NT.

***The 'Primary Principle' is ill-defined and does not reflect the genuine interests of Territorians***

29. The 'primary principle' is established by the legislation as the overarching principle that will guide the TC or the Minister when using powers contained in the bill. The primary principle means the TC or Minister must have regard to "the primary objective of driving economic development for the Territory or a region of the Territory" and the "the potential social and environmental outcomes for the Territory or a region of the Territory". The implications of this for decision-making are profound and concerning. The principle is ill-defined and vague and could be used as pretext for prioritising the interests of resource companies over communities and the environment.
30. The elevation of so-called economic development above all other considerations, such as health, safety, and environmental considerations, represents a dangerous provision that could lead to worse outcomes for people and the environment. The principle conflates outcomes that benefit private businesses with those which will benefit the vast majority of Territory residents, when in reality these sets of interests commonly diverge.
31. ECNT rejects the premise that fast-tracking big projects like fracking and large-scale agribusiness will lead to better economic outcomes for the vast majority of Territorians. An inadequate royalty regime means that Territorians don't see a fair share of revenue from megaprojects, and the structure of these industries often relies on FIFO labour. Sustainable development that genuinely benefits peoples' livelihoods require appropriate scrutiny, evaluation, and assessment, not overarching powers that cuts the public out of engagement with these projects.

***The Bill undermines existing regulatory processes that are already under-resourced***

32. Regulatory processes in the NT need to be better funded, allowing for independent decision making, and a more effective public sector. This bill further undermines the jurisdiction of independent regulators and government departments. overriding their



functions and undermining their experience and mandate.

33. ECNT submits that many of the intended consequences of the Bill – namely, more streamlined and effective regulation of industries – could be better achieved by providing more adequate resourcing to the Departments and regulators who have the expertise, skills, and experience to carry out these functions, instead of expending public money to establish a new Office with no experience in these functions and without the required expertise.

### ***Changes from the draft Bill fail to reflect community feedback***

34. The only change that ECNT supports from the draft Bill to the tabled Bill is the removal from the scheduled acts of the *Nuclear Waste Transport, Storage And Disposal (Prohibition) Act 2004*.
35. Other changes from the draft to the tabled bill represent a further erosion of community rights and greater centralisation of power in an unelected bureaucrat and the Chief Minister. This is despite the fact that a wide range of Territorians expressed their opposition to the Bill and its powers during the consultation process. Some of these concerning changes, all of which ECNT recommends the reversal of, include:
- a. The removal of limitations on eligibility for the Territory Coordinator role based on perceived partisanship, i.e. limiting those who have donated to a political party recently from becoming the Territory Coordinator. Removing this provision, which existed in the draft Bill, significantly risks contributing to a public perception that the Territory Coordinator is neither independent nor making decisions in the best interests of Territorians.
  - b. The creation of infrastructure coordination areas (ICAs) and plans. The ICA is a new concept introduced by this Bill that gives the Territory Coordinator new and expanded powers to expedite the delivery of 'significant projects'.
  - c. Vesting in the Territory Coordinator powers to authorise people to enter land within an Infrastructure Coordination Area (ICA) or TDA, and should damage to that land occur, vesting powers in the Territory Coordinator to determine the amount of compensation, if any.
  - d. Removing the need for step-in notices to be issued before an exemption power can be used. The far-reaching exemption power can now more easily be deployed by the TC or Minister.

Thank you for considering this submission. ECNT is interested in any engaging in any further opportunities to speak with the Scrutiny Committee about this Bill. Furthermore, ECNT encourages the Scrutiny Committee to undertake public hearings in locations across the Territory to ensure that Territorians have a forum in which to adequately express their views about the Bill.