

Adrian Tomlinson



18 February, 2025

Secretary,
Legislative Scrutiny Committee,
GPO Box 3721, DARWIN NT 0801

Via email to: LA.Committees@nt.gov.au

To whom it may concern,

RE: Submission Territory Coordinator draft bill

I write to submit my deepest objection to the draft Territory Coordinator bill.

I object this draft legislation because of:

- 1) numerous reasons outlined in two previous submissions dated 5 November 2024 and 17 January 2025 (both attached), which I request you consider and publish;
- 2) serious new concerns regarding:
 - a) poor and problematic consultation on the draft bill - specifically an inadequate and unbalanced consultation process; and an inadequate, non-transparent, unbalanced and misleading Consultation Report, that is an unsuitable basis for the Legislative Assembly to use in its decision making and has fundamentally compromised its ability to make a decision;
 - b) the belated removal, without informing the public during the consultation phase, of limitations in the draft Territory Coordinator Bill's powers which protected Aboriginal people's rights, heritage places and sacred sites, and inclusion of *the Heritage Act 2011* in the Schedule.

I expand on these two new concerns below.

A. Poor and problematic consultation on the draft bill - specifically inadequate and unbalanced consultation process; and an inadequate, non-transparent, unbalanced and misleading Consultation Report that fundamentally compromises the Legislative Assembly's ability to make a decision on the draft bill

This Consultation report is misleading, done to an unacceptably low standard, is not impartial and omits key information about issues raised and the implications to the legislation. Given these shortcomings the Legislative Assembly's ability to make a sound decision on the draft bill has been fundamentally compromised.

I am concerned that the above shortcomings mean that the Consultation Report on the Draft Territory Coordinator Bill¹ and consultation process it describes do not meet the values and standards required by the NT Public Sector Code of Conduct². This report and process were not impartial (fails clause 5.1.5); are not up to the expected standard (fails clause 5.1.3); does not afford natural justice (fails clause 5.1.6); and has not taken all reasonable steps to ensure that information and knowledge relied upon to make decisions or take actions is evidence based, transparent, correct and current (fails clause 5.1.7).

The shortcomings which have led me to the above conclusions are:

- the consultation report is superficial at just 8 pages and does not afford justice to those who made submissions;
- the consultation report is written in a manner that consistently frames views as mixed and equivocal
- It does not quantify the level of support and opposition;
- It is not transparent - it does not publish the submissions nor document with any specificity the concerns raised;
- it does not meaningfully and systematically address those concerns raised, assess and report on whether on any these are matters of substance, where natural justice and the public interest sits, and describe how these have been resolved;
- It does not appear to be an impartial report as it diminishes the extensive opposition to the Bill;
- It does not appear to have been an impartial process. It describes how 89 meetings were held with what appears to be industry groups. It seems the Acting Coordinator has spent his time meeting with industries and industry groups (intended to be the beneficiaries of the legislation) and not afforded the same opportunities to the broader community. Furthermore it does not report that the public feedback at the community meetings was scathingly critical.

Additional evidence:

- I attended a crowded public meeting in Alice Springs at which, over a two hour period, there were a very large number of questions and concerns raised and absolutely no support. The issues raised and level of concern is absolutely disappeared in the consultation report.
- My attached letters raises numerous issues. The report on consultation has not addressed many of the issues raised in my letter. For example I expressed concerns about this bill making the coordinator and minister positions vulnerable to corruption but this is not addressed.

The deficiencies in this report and process are especially alarming as the process involved the acting Territory Coordinator. The failure to properly report the feedback from the public and faithfully deal with information contained in submissions, raise serious questions as to how he will fulfil the “step in” duties of the Coordinator, which require accurately dealing with technical advice from decision-making entities, while working within the Public Sector Code of Conduct.

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https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1482226/Consultation-Report-Draft-Territory-Coordinator-Bill-2025.pdf

² https://ocpe.nt.gov.au/_data/assets/pdf_file/0006/379329/code-of-conduct-for-the-northern-territory-public-sector.pdf

B. The belated removal, without informing the public, on limitations to the Coordinator bill's powers which protected Aboriginal people's rights, heritage places and sacred sites and inclusion of the Heritage Act 2011 in the Schedule

The draft Bill as consulted included limitations on the exercise of powers (former clause 14) preventing the Territory Coordinator (TC) from exercising the powers under the Act in a manner that would interfere with an agreement between the Territory and the Commonwealth or interfere with or modify specified Territory legislation including the *Northern Territory Aboriginal Sacred Sites Act 1989*, the *Heritage Act 2011*, the *Aboriginal Land Act 1978*, exercise by Aboriginal persons of rights under the *Pastoral Land Act 1992*. **These limitations have been removed**

The amended draft bill **now includes the *Heritage Act 2011 in the Schedule***. This means that the full range of powers under the Bill could be applied to, for example, processes and decisions to approve work being carried out on a heritage place or object, including works which would impinge on Aboriginal and Macassan archaeological places and objects, which are automatically protected under the Heritage Act.

I am absolutely opposed and disappointed by the removal of these limitations and inclusion of the Heritage Act 2011 in the Schedule. It is profoundly disrespectful and hubristic to allow the Territory Coordinator to weigh in on matters, such as protection of sacred sites and Native Title rights which are of matters of timeless significance and give affect to legal rights respectively

Notwithstanding the injustice and disrespect in these changes, it creates a great risk of a Juukan Gorge scenario where sacred sites are tragically damaged and the Territory suffers immense reputational damage.

Conclusion

Thank you for the opportunity to make the submission.

I request the Legislative Scrutiny Committee:

1. Ignore the Consultation report on the draft Territory Coordinator Bill and obtain the public submissions and notes from all meetings on communications and engagement undertaken and consider and publish these.
2. Consider possible breaches of the Public Sector Code of Conduct
3. Recommend that this Bill be rejected and direct the Government to initiate a transparent and impartial consultation process starting with a green paper to develop legislation that is genuinely in the public interest
4. Consider the issues raised in this letter and my two previous submissions which are attached
5. Publish this letter and my two previous submissions which are attached.

Thank you for considering this submission.

Kind regards,



Adrian Tomlinson

Adrian Tomlinson



17 January, 2025

Department of Chief Minister and cabinet
Via e-mail to: OTC.consultation@nt.gov.au'

To whom it may concern

SUBMISSION TERRITORY COORDINATOR BILL

I am writing to express my deepest objection to this draft legislation.

If approved it will lead to the erosion of democratic rights, not treat everyone equally, lead to poor decisions, create uncertainty and open the Territory to corruption.

The Northern Territory is already a great place for business. We need community development with a focus on equity and building upon our comparative advantages to build a sustainable budget, community and environment.

My submission draws upon experience from having worked as a public servant in multiple jurisdictions, focused largely on water resources, environmental and planning legislation.

In my submission I outline the following reasons for my objection.

1. Consultation has shown this proposal is deeply opposed by the public
2. The proposed legislation will not give certainty to business (or other stakeholders or the environment)
3. The proposed legislation could lead to corruption
4. Goes against NT experience that more not less transparency is needed for sound decisions
5. "Step in" powers unacceptably diminish opportunity for the public and public servants to participate in decisions resulting in worse decisions
6. Impossible skill set needed for the Territory Coordinator position
7. Misleading public engagement due to flawed rationale on the need for the Territory Coordinator being presented during consultation meetings
8. The government has not demonstrated the need for the Territory Coordinator legislation
9. Central Australian case studies showing unacceptable risks
10. Submission on earlier draft dated 5 November 2024.
11. Alternative proposal

I expand on each of these objections below.

Reasons for objection

1. Consultation has shown this proposal is deeply opposed by the public

The level of concern and widespread public opposition needs to be acknowledged. This level of concern is highly unusual and widespread. I attended the public meeting in Alice Springs. The meeting went for around two hours. During this time there was zero public support and a barrage of questions surrounding the proposal, to which many of the answers were widely considered unsatisfactory.

Failure to acknowledge the level of concern and properly address these real concerns raised during consultation meetings would be a deep failure of justice.

2. The proposed legislation will not give certainty to business (or any other stakeholders or the environment)

The acting Territory Coordinator reiterated that the purpose was to provide certainty to business.

Yet this legislation creates uncertainty by enabling variation as to when and how laws are applied, if at all. This introduction of discretion will inevitably lead to individuals and business seeking variations.

Going forward nothing will be certain. It reduces certainty for business as to what the expectations upon them are, as well to environmental outcomes.

From my experience in applying legislation I am absolutely confident that this will make it harder for public servants to even-handedly apply legislation. More powerful applicants will question whether the policies guiding how legislation applies apply to them and seek to by-pass public servants.

3. The proposed legislation could lead to corruption

This legislation gives an unelected individual discretion to vary how laws are applied. The exemption provisions give the Minister even wider powers. These wide ranging powers make the positions of Territory Coordinator and also the Minister vulnerable to approach from individuals and businesses standing to make very large benefits by variations to how laws are applied. This is made worse as their decisions are based on the unclear and very subjective grounds of what constitutes economic prosperity and the “primary principle”.

This subjectivity in how and when these powers are applied and what constitutes economic prosperity will create perceived and actual risks of corruption.

4. Goes against NT experience that greater transparency not less transparency is needed for decisions to be sound

The Northern Territory is a small jurisdiction, with one house of Parliament, and a small population, resulting in inevitable proximity between applicants, politicians and bureaucrats. It relies on absolute transparency in how laws are applied. This was the experience in the Stylo Station water licence where a former NT political candidate Tina Macfarlane was controversially granted a water licence larger than her property, ever would have needed. This was at odds to the approach to water licensing in the area¹. A review recommended decision-making processes be made more transparent through checklists and paperwork. This legislation conflicts with that finding.

It is easy to see how the Territory Coordinator, with a minimal understanding of water licensing could similarly miss-apply the “step in” powers to enable more bad decisions like this.

5. Step in powers unacceptably diminish opportunity for the public and public servants to participate in decisions resulting in worse decisions

While the Coordinator is required to consult with the responsible entity, ultimately the draft legislation allows the Coordinator to “step in”. Furthermore under proposed clause 62(1)(a) if this happens the subsequent decision cannot be appealed or reviewed.

This step in power which changes how a law is applied and appeal provisions is unacceptable. My experience is that statutory processes, including review and appeal need to be fully and consistently applied for proposals to be properly assessed on their merits and natural justice afforded to all parties.

It cannot be assumed that the initial advice received from the department/decision making entity can obviate the need for full and proper application of statutory processes, as it removes the full opportunity for the public to make submissions and seek review; and sidelines public servants skilled in the area to participate throughout.

The Singleton groundwater licence is a clear example where decision makers within the department clearly held different views to the public about the acceptability of severe impacts on the environment in granting this licence. As these impacts are extremely severe and risk creating regional precedents, it is therefore necessary that the process be applied fully, with involvement of professionals skilled in the area and that stakeholders have every appeal and review right available under legislation. This would not happen under this draft legislation.

6. Impossible skill set needed by the Territory Coordinator position

In the public meeting it was clear that the Acting Co-ordinator lacked familiarity with the 32 pieces of legislation which are subject to this bill.

This is inevitable. It is an absolutely impossible ask to have such familiarity. Furthermore if the person were to be such an expert in Northern Territory legislation they are unlikely to

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<https://www.ntnews.com.au/news/nt-water-review-finds-tina-macfarlanes-property-was-granted-licence-for-more-water-than-it-could-use/news-story/7a9f44bc6ca7c87c02fa9004a9031fe6>

understand the social and technical underpinnings of the legislation or be sufficiently familiar with stakeholder interests.

Handing over powers to apply legislation to a person who is ignorant of the nuance of the legislation, its technical underpinnings and repercussions of decisions will lead to shallow decisions. This is an unacceptable degradation of decision making processes. It will lead to worse decisions and poor precedents.

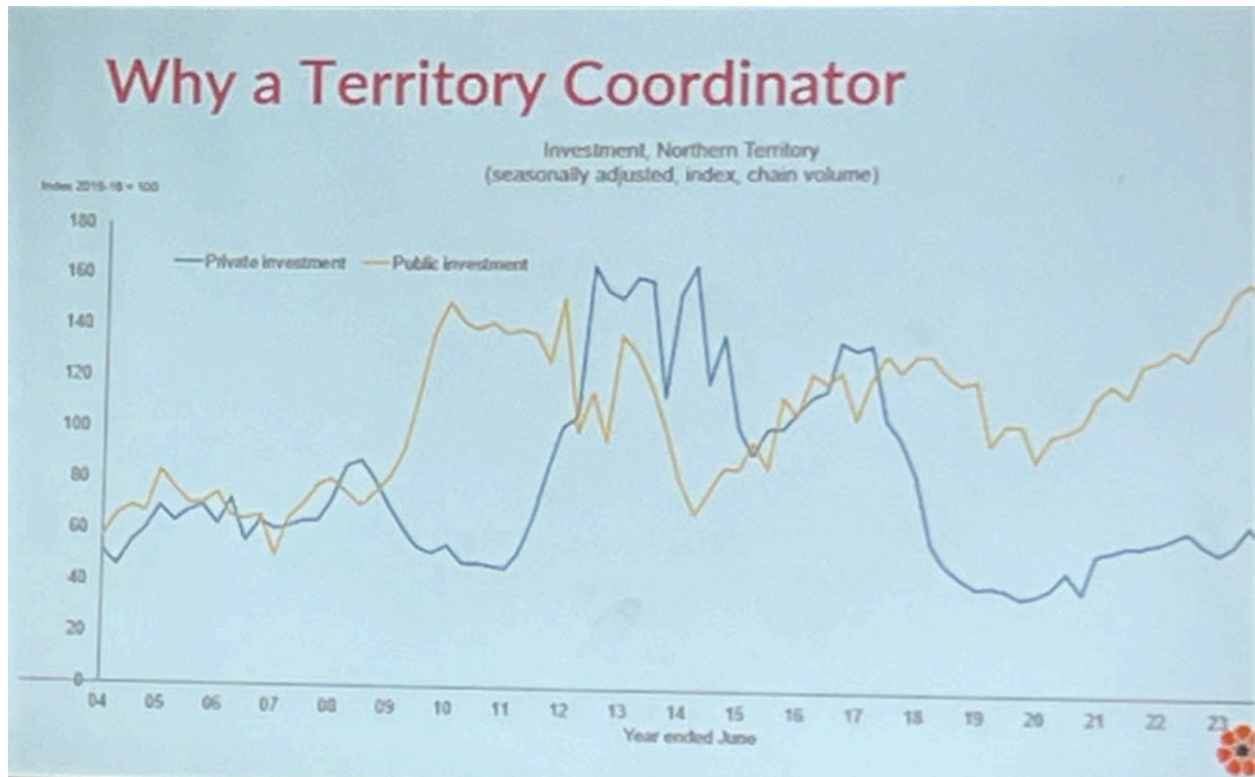
7. Misleading public engagement due to flawed rationale on the need for the Territory coordinator being presented during consultation meetings

During consultation the Acting Territory Coordinator laboured the following graph showing public versus private investment below as the reason for the role. This felt misleading and flawed. It expresses an ideology about how best to achieve a balanced budget rather than an absolute truth. It therefore detracted informed debate and consent.

While small government may be the government's preferred approach (to my recollection) the graph was not linked to the budget bottom line and was couched as the only approach. This rationale is clearly flawed. Building the capability of all Territorians through investment in health, education, healthy environments and infrastructure is an alternative approach that will grow the economy on an ongoing basis and expand its productive capacity as is highlighted in the Federal Government Budget 2024-25 Fiscal strategy and outlook². Through this approach increased government funding could be sustained, with all Territorians benefiting, rather than just private investors.

In addition to my concern about how this graph misled the audience, it is my view that a different pathway focused on opportunity for all Territorians is far better and more sustainable than occasional sugar hits to the economy that occur when occasional big projects are in their construction phase,, which seems to be the story told in the graph below.

² https://budget.gov.au/content/bp1/download/bp1_2024-25.pdf (see p79)



8. The government has not demonstrated the need for the Territory Coordinator legislation

The premise for this legislation appears to be that it is essential to reduce barriers to business investment. While compliance and statutory processes may be inconvenient, no compelling evidence was presented during consultation that there are prohibitive barriers to investment.

NT consistently benchmarks internationally as one of the best jurisdictions for mining³. More broadly the Territory is a resource rich and has a stable government, which for decades has invested in “resources exploration” thereby de-risking investments. Furthermore royalties are quite low and unlike much of Australia the territory generally does not require water users to pay for water use.

9. Central Australian case studies

From my experience in water management in the Northern Territory I raise concerns with two examples related to groundwater in the arid zone in areas where it sustains vital ecosystems and cultural values

1. Ti Tree Water Control District

³ <https://smallcaps.com.au/mining-survey-reveals-top-20-global-jurisdictions-fraser-institute/>

The first consultation paper specifically mentioned a “Ti Tree horticultural zone”. However, the Ti Tree Water Control District is essentially fully allocated. This was determined during an extensive consultation process in developing the current water allocation plan. The remaining allocations are reserved for “Aboriginal Economic Development”.

More groundwater extraction means damage to groundwater dependent ecosystems and cultural values which was opposed by the Traditional Owners and Water Advisory Committee. I am concerned that under the new legislation the Minister could declare the Ti-Tree Water Control District area a Territory Development Area allowing the Coordinator to make water extraction licence decisions whether they complied with the WAP or not, ignoring the current community consensus

2. Singleton groundwater extraction licence and other approvals needed

If this proposal proceeds it’s environmental impacts will be immense. It will damage or destroy groundwater dependent sacred sites and ecosystems over a vast area. It remains the subject of a Supreme Court appeal. There is a long way to go. It is still subject to a major environmental impact assessment. It also needs clearing and non-pastoral use permits. Under the bill, the Chief Minister could declare this a Project of Territory Significance enabling the Coordinator to exercise powers such as to step into the shoes of the NT EPA during the Environmental Impact Assessment process or the NT Minister for the Environment at the environmental approval stage. This is an immensely complicated project, one the community of Ali Curung unanimously opposes. The environment and First Nations people must be afforded the full opportunity for justice under the law.

In each case the coordinator or the Minister should not be able to intervene in these cases as they rely upon existing plans, full application of legislation and the public deserve the chance to have a say.

10. Submission on earlier draft

In my letter dated 5 November 2024 (attached) I submitted comments on the early discussion paper which was tabled by the opposition in Parliament. I request that this submission also be considered in NT Government’s response to submissions.

11. Alternative proposal

During the public meetings the Acting Territory Coordinator was at pains to state the intention was not to override laws but to coordinate how they are applied most efficiently. Unfortunately this legislation far overreaches this intent.

I recommend:

- that the current proposal be abandoned for the reasons outlined.
- a new “green paper” be written to encourage discussion and gather feedback on whether the position of Coordinator may hold some value in a far more limited role as **an**

honest broker acting with no legislative powers whatsoever, who by virtue experience and trust might help ensure processes are well coordinated.

Conclusion

Thank you for considering my objections. I welcome the opportunity to participate in further discussions on this matter.

Sincerely



Adrian Tomlinson

Attachments

1. Submission dated 5 November 2024 on earlier consultation draft (separate file attached)

Adrian Tomlinson



5 November, 2024

Via email: OTC.consultation@nt.gov.au

To whom it may concern,

RE: Submission Territory Coordinator – Consultation Paper

I write to express my deepest objection to this proposal.

I was unable to make a submission during the consultation period as the consultation paper was not available to members of the public. ***It is shocking that a proposal of this nature, which seeks to bypass or override normal application of laws that protect the public interest is being progressed without open engagement and public consultation.***

While the intention to establish the Territory Coordinator position was communicated during the election, this does not obviate the need for orderly and inclusive consultation on the detail of the proposal. Furthermore this proposal goes dangerously beyond the election promise as it introduces unfettered exemption powers that are without an Australian precedent and in essence undemocratic¹.

The NTG must restart the consultation so as to include all stakeholders, not just its beneficiaries, with a starting proposal that is consistent with democratic principles. It must respond to the submissions received before tabling any enabling legislation in parliament.

Further comments

1. ***I object to the step in power, which would allow the Territory Commissioner or Chief Minister to undertake an assessment and decision-making process under an NT law as though they are the original decision-maker.*** This power would allow the Chief Minister to issue 'Exemption notices' which modify the application of a Territory law in relation to a specific project of significance or a TDA. These powers are by definition unlawful and unnecessary to achieve the aims of the position.
2. ***I object to the sidelining of public servants, laws, processes and information that leads to good decisions.***

As a public servant with nearly 20 years employment the proposal is deeply shocking.

I have spoken with several career public servants who have expressed the same dismay that their professional expertise, the information they have gathered and use to make sound decisions and the orderly decision making processes established under

¹For example it is understood the proponents of the Chandler waste storage facility are now seeking to include radioactive wastes, which was not considered in the original environmental impact assessment. There is nothing in this proposal to prevent this proposed change from being waved through.

law that are guided by publicly agreed plans could all be ignored at the discretion of a public servant unfamiliar in their areas of expertise and against the public's wishes.

3. ***I object to how this proposal would exclude the public from decisions and decision review.***

The only opportunities for review are via notice of decisions in Parliament or judicial review in the Northern Territory Supreme Court. In practice with a single house of Parliament the incumbent government cannot be challenged via notice of decision in Parliament. Furthermore the costs and demands of a Supreme Court challenge effectively puts appeal via this mechanism beyond the reach of ordinary Territorians.

This proposal unashamedly concentrates power within the Government, big business and the wealthy.

4. ***I object to the Primary Principle - driving economic prosperity in the Territory as it privileges economic interests***

This principle is unsophisticated and misguided and should not be decided by a single individual. What constitutes development is a complex consideration. This is why projects need to comply with laws and properly follow inclusive statutory decision-making processes.

Good decisions do not only lead to economic prosperity they must also be sustainable, account for shifted costs (e.g. land clearing results in atmospheric emissions and ecosystem damage), equitable and legal.

Concentration of wealth and income in a few wealthy individuals and businesses may appear to be a measure of prosperity, but if it further alienates or puts costs on marginalised groups and damages the environment it is a huge step backwards.

First Nations people have cared for these lands for millennia. This principle fails these high standards.

5. ***The case studies highlight the shortcomings of the proposal.***

While employed with the NTG I worked on water planning for the Ti Tree Water Control District, which is used as an example potential horticultural zone. The most recent water allocation plan established that the resource was basically fully allocated except for water held under the Aboriginal Water Reserve. These water-sharing arrangements were based on consultation including the involvement of a Water Advisory Committee. Any further allocations for such a zone would damage groundwater dependent ecosystems, largely on Aboriginal land against the wishes of the Native Title holders.

This is a good example of how the Territory Coordinator powers could be used to drive an ideological agenda riding roughshod over already established community decisions.

Thank you for considering my submission.

Kind regards,


Adrian Tomlinson

CC: Erwin Chandler, Alice Springs News