

Wednesday 19 February 2025

Dear Committee Members,

## **Re: The Territory Coordinator Bill before the Assembly**

The Territory Coordinator Bill<sup>1</sup> ('the Bill') should be rejected for two reasons: (1) it is suicidal, and (2) it is anti-democratic. I submit further that, save for the proposals articulated in §2, no amendments can render the Bill palatable. It must be rejected *in toto*.

### **1. The suicidality of the Bill**

Suicide is the intentional ending of one's life. What will the Bill be used for? The Bill has been designed to override opposition to, and scrutiny of, further fossil fuel extraction projects, particularly fracking in the Beetaloo Basin. According to the NT Government's own guide to the Bill, the new powers 'may be appropriate' precisely 'where multiple onshore gas developments' exist.<sup>2</sup> Quite apart from the risks of groundwater contamination and related environmental catastrophe, risks which one tires of rehearsing, if we accept that fracking cannot be done without increasing greenhouse gas emissions, and we accept the collective duty not to increase such emissions in order to restrain global warming and cascading environmental crises, then approving and facilitating fracking projects – indeed any fossil fuel projects, whether they involve fracking or not – is tantamount to a death wish.

Not merely a death wish, but a fully articulated death plan. That is how the Bill ought to be understood and described.

### **2. The Bill's anti-democratic credentials**

The Bill would concentrate power in the figure of the Chief Minister ('the CM') and their lackey, the Territory Coordinator ('the TC').<sup>3</sup> The CM and TC, together, would wield unprecedented and unaccountable power over the NT. The only semblance of a constraint on the exercise of this power is the 'primary principle', which stipulates that 'the primary objective of driving economic development for the Territory', as well as any 'potential social and environmental outcomes', must be had regard to: cl 8(1). To 'have regard to' something means only that it must be mentioned in reasons for decision. Consider the following extract from a hypothetical decision:

TC: In making the decision [to dismantle any barriers to immediate and large-scale gas extraction and processing], I have had regard to the virtually guaranteed cataclysmic consequences for planetary life of further fossil fuel development. Thus, I have complied with my duties under the primary principle.

This would be self-evidently absurd.

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<sup>1</sup> Territory Coordinator Bill 2025.

<sup>2</sup> Department of the Chief Minister and Cabinet, 'Guide to the Territory Coordinator Bill', 14 November 2024, p. 9.

<sup>3</sup> Or is the truer account of things that the Chief Minister is the lackey of the Territory Coordinator and the vested interests he represents? The CLP has appointed Stuart Knowles, a previous General Manager of INPEX, as the interim TC, an appointment which does nothing to undermine the public perception that the NT Government and the gas industry are indistinguishable.

## 2.1. Proposal #1 – Strengthening the primary principle

If the Bill is to contain such a primary principle, it must explicitly rule out decisions that will worsen life on earth. Please see the table below for a suggested rewording of the relevant clause.

Cl.	Current wording	Suggested replacement
8	<b>Primary principle of Act</b> (1) The primary principle of this Act is that, when exercising a key power under this Act...the Minister or the Territory Coordinator must have regard to following considerations: (a) the primary objective of driving economic development for the Territory or a region of the Territory; (b) the potential social and environmental outcomes for the Territory or a region of the Territory.	<b>Primary principle of Act</b> (1) The primary principle of this Act is that, when exercising a key power under this Act...the Minister or the Territory Coordinating Council [see Proposal #2] must not: (a) Accelerate, directly or indirectly, the cascading effects of warming-related climate change. (b) Drive economic development at the expense of the integrity and long-term viability of the environment and livelihoods, including more-than-human livelihoods.

Absent an amendment along these lines, the Bill is untenable. It will result in rampant, profit-driven resource extraction, harming Territory environments and livelihoods.

## 2.2. Proposal #2 – Democratising the Territory Coordinator

As currently conceived in the Bill, the statutory office of the TC is authoritarian. Economic decisions imposed from above in an authoritarian manner will invariably prioritise the parochial interests of ruling individuals. It is no accident that a gas industry executive is the inaugural TC. The narrative that gas is the *sine qua non* of the Territory economy has been peddled by false prophets. Recourse to etymology rescues *economics* from this crude vulgarisation: referable back to the Greek *oikonomia*, meaning something akin to the management of a household, there is no necessity in an economy for either the profit motive or hierarchical decision-making. Households – broadly conceived – are best managed democratically by consensus. Authoritarian management implies tyranny and the fracturing of social relationships. In the spirit of compromise, I therefore propose the following amendment.

Cl.	Current wording	Suggested replacement
11	<b>Appointment of Territory Coordinator</b> (1) The Administrator may, in writing, appoint an eligible person to be the Territory Coordinator. (2) A person is an eligible person if the person has suitable qualifications or experience relating to the Territory Coordinator's functions. (3) Notice of the appointment must be published in the Gazette as soon as practicable after it is made.	<b>Civic duty to serve on the Territory Coordinating Council</b> (1) There shall be established a body called the Territory Coordinating Council (TCC). (2) The TCC shall, striving for consensus, make decisions about the Territory's economic future.

		<p>(3) Members of the TCC will be chosen by lot<sup>4</sup> from among the pool of Territory residents.</p> <p>(4) Current and former executives of resource extraction companies, or of large-scale pastoral and agricultural enterprises, or who are involved in the military-industrial complex, are disqualified from membership of the TCC.</p>
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I suggest further that, to confirm the democratic credentials of the TCC, the CM must be prohibited from overriding decisions made by the TCC. Only a court ought to have the power to override a decision of the TCC. The court could only do so if the decision was unlawful.

### 3. Worst-case scenarios from use of exemption power

The table below maps the worst-case scenarios that could result from the exemption of each of the Acts listed in the schedule to the Bill. This is a work in progress. Please bear in mind there may be worse worst-case scenarios in store for the Territory but presently unimaginable (at least to the author). Note that just because an Act has not been listed in the Bill's schedule does not mean it will not be included at some future date. The Bill allows the Administrator by regulation to add any Act to the list of scheduled laws: cl 105.<sup>5</sup> The Administrator could, for example, add the *Northern Territory Aboriginal Sacred Sites Act 1989* at any time post-enactment of the Bill. It is worth highlighting that, in the original draft of the Bill, this Act was explicitly protected from being subjected to the powers in the Bill, but such protection has disappeared from the current version of the Bill. The Administrator could also, at any time, add the *Charles Darwin University Act 2003* to the list, giving the TC the power to suppress academic freedom of speech, particularly in relation to any criticism of the resource extraction industry and potential conflicts of interest with university administration.

#	Act	Worst-case scenario if exempted
1	<i>Building Act 1993</i>	Given this Act relates to the establishment of technical standards for buildings, registration of building practitioners and certifiers, regulation of building matters, granting of building permits and occupancy certifications and establishment of building appeal processes, there would be serious implications were it to be exempted. In the feverish rush to construct buildings associated with the CLP's profit-maximising development agenda, the TC could order that buildings be constructed that fall short of standards required to prevent injury and death. The walls might literally collapse in around workers and families.
2	<i>Control of Roads Act 1953</i>	This Act relates to the administration and control of Territory roads. Exempting this Act would mean reduced administrative oversight over Territory roads, and even the loss of control over Territory roads. The risk of injury and death from mismanagement of roads would increase. Furthermore, the public would lose their consultative rights to object

<sup>4</sup> That is to say, randomly, much like is the case with jury duty.

<sup>5</sup> The definition of 'scheduled law' includes 'an Act prescribed by regulation': cl 3.

		under ss 20-22 to the creation of a road, contributing to the anti-democratic planning regime sought by the TC.
3	<i>Crown Lands Act 1992</i>	Given that this Act relates to Crown lands, exempting it would make it possible for the TC to alienate Crown lands as he sees fit. This could result in serious corruption with the allocation and subdivision of what ought to remain public land for public purposes to private actors.
4	<i>Darwin Waterfront Corporation Act 2006</i>	This Act provides for the establishment and governance of the Darwin Waterfront Corporation. Exempting this Act could allow the TC to sack the Corporation Board at any time without due process. Indeed, had Dr. Richard Fejo not resigned as Chairperson of the Board in protest at the CLP's decision to lower the age of criminal responsibility from 12 back to 10, the TC could have unilaterally terminated his appointment anyway.
5	<i>Electricity Reform Act 2000</i>	This Act regulates the electricity supply industry, and makes provision for technical standards for electrical installations and for other purposes. Exempting it could result in the electricity supply industry failing to conform to the technical standards required for safe electricity generation and provision. Blackouts could become more likely, as well as injury and death from electrocutions and other accidents involving electricity supply equipment such as powerlines.
6	<i>Energy Pipelines Act 1981</i>	This Act regulates the construction, operation, maintenance and cessation of use or abandonment of gas pipelines. Exempting this Act would allow pipeline construction and operations not to conform to prescribed safety standards. Explosions from improper construction or misuse could result in serious injury, death, and contamination of the environment.
7	<i>Environment Protection Act 2019</i>	Given this Act is ostensibly designed to protect the environment through an environmental licencing regime, exempting it could result in the destruction of the environment, with human and more-than-human life becoming unviable in the Territory.
8	<i>Fisheries Act 1988</i>	Given this Act relates to the regulation, conservation and management (including sale and processing) of fisheries and fishery resources, exempting it could result in overfishing and the consequent decimation of marine ecosystems, naturally with negative flow-on effects for economies based on fisheries.
9	<i>Geothermal Energy Act 2009</i>	This Act regulates the rights to conduct activities for the exploration of geothermal energy resources and the production of geothermal energy. Exempting it could facilitate the unrestrained exploration for geothermal energy resources and its unrestrained production. There would need be no obligation to protect the environment in exploring for, or producing, geothermal energy. The consequences in #7 could follow.
10	<i>Heritage Act 2011</i>	Given this Act aims to protect the Territory's cultural and natural heritage, exempting it could result in culturally significant places being stripped of their heritage status and destroyed for profit-maximising ends. Such an outcome could particularly harm First Nations communities who are already hard-pressed to protect their significant sites.
11	<i>Land Development</i>	This Act provides for the establishment of the Land Development Corporation to develop and manage land for new and existing

	<i>Corporation Act 2003</i>	industries in the Territory and for use for residential developments. Exempting this Act removes the accountability provisions that would otherwise apply to the Corporation. For example, proper accounts of the activities of the Corporation need not be kept. This move would enable corruption in the development and sale of land, naturally benefitting the profit-maximising industries who would be seeking to influence the TC's decisions.
12	<i>Land Title Act 2000</i>	Given this Act provides for the registration of land and interests in land, exempting it could seriously undermine the operation of the Torrens system in the NT. Title would no longer be indefeasible, and the land register could be amended at will by the TC, riding roughshod over any proprietary interests that might exist, whether recorded or not.
13	<i>Lands Acquisition Act 1978</i>	Given this Act regulates the acquisition of land by the Territory, exempting it could mean that when the NT Government acquires land, it need no longer do so on just terms.
14	<i>Local Government Act 2019</i>	This Act provides for and regulates local government in the Territory. Exempting it would allow the TC to, on a whim, dismiss all mayors and councillors and appoint new ones who are friendlier to the TC's aim of unrestrained profit-maximising development. The TC could also decide to vary town boundaries with no regard for the wishes of elected councillors, let alone local constituents. Relatedly, the TC could undertake planning, including creating new roads, without consulting or including councils.
15	<i>Mineral Titles Act 2010</i>	This Act provides for the regulation of mineral titles for exploration, extraction and processing of minerals and extractive minerals in the Territory. Exempting this Act means mineral titles can be granted without considering whether the applicant is a fit and proper person to hold the title. Unregulated mineral exploration, extraction and processing would pose grave environmental and social risks. See #7.
16	<i>National Gas (Northern Territory) Act 2008</i>	This Act provides a framework to enable third parties to gain access to certain natural gas pipelines services. Exempting it means that the National Gas Law and Regulations need not apply. I am unsure of the implications, but there would be a reason why industry wishes this Act to be included as an exemptible Act.
17	<i>Pastoral Land Act 1992</i>	This Act provides for the conversion and granting of title to pastoral land and the administration, management and conservation of pastoral land. Exempting this Act could mean there are no restrictions on the use of pastoral land for other purposes. This situation would allow resource extraction activities to run rampant, against the wishes of local communities. It would result in long-term sustainability issues. See #7.
18	<i>Petroleum Act 1984</i>	Given this Act regulates the exploration for, and production of, petroleum, exempting it would result in unrestrained exploration for, and production of, fossil fuels, resulting in serious environmental and social consequences. See #7.
19	<i>Petroleum (Submerged Lands) Act 1981</i>	This Act regulates the exploration and exploitation of petroleum resources in submerged lands adjacent to NT coasts. Exempting this Act would have similar consequences to those discussed in #18.

20	<i>Planning Act 1999</i>	This Act relates to planning and control of the use and development of land. Exempting it allows unrestrained development in the service of profit-hungry companies, with no thought for the public long-term good. There need no longer be public consultation, nor public input sought, on planning schemes. The TC can ensure that the Planning Commission need not exercise its powers ‘independently, impartially and in the public interest’: s 81D(1). The NT will become a canvass of ghost towns resulting from poorly planned developments that were suitable only to short-term resource-extractive gain.
21	<i>Port of Darwin Act 2015</i>	This Act relates to the management of assets, rights and liabilities in respect of the Port of Darwin. Exempting this Act could mean Port of Darwin land is sold as freehold title to the highest private bidder, swelling the treasure trove of public land that profit-maximising companies have managed to acquire.
22	<i>Ports Management Act 2015</i>	This Act deals with the control, management and operation of ports in the NT. Exempting this Act would mean there is no longer any need to have port safety plans, thereby creating significant OH&S problems for port workers. Injury and death are foreseeable.
23	<i>Radiation Protection Act 2004</i>	Given this Act aims to protect people and the environment from harmful radiation, exempting it would have catastrophic consequences. If there need be no duty to ensure harm does not result from radiation sources, then the incidence of radiation-induced disease will increase in the NT, as will radiation-induced deformations in plant and animal life. Human and more-than-human life will become unviable in the NT, just as it became unviable in the surrounds of Chernobyl following the nuclear disaster there in 1986.
24	<i>Radioactive Ores and Concentrates (Packaging and Transport) Act 1980</i>	Given this Act relates to the safe package, storage and transport of radioactive ores and concentrates, exempting it will produce a serious risk of radioactive contamination. See #23.
25	<i>Special Purposes Leases Act 1953</i>	This Act regulates the granting of ‘special purpose’ leases. <sup>6</sup> Exempting this Act would decrease transparency over the granting of such leases, scrapping the provisions relating to independent review. A special purpose lease could be granted to a private contractor to operate a prison.
26	<i>Territory Parks and Wildlife Conservation Act 1976</i>	This Act provides for the establishment of Territory parks and reserves and the study, protection, conservation and sustainable utilisation of wildlife. Exempting this Act could see the Territory Wildlife Park bulldozed for mining purposes if mineral deposits are discovered on site. Exempting this Act could also result in the unsustainable hunting of wildlife, eventually wrecking interconnected ecosystems.
27	<i>Traffic Act 1987</i>	Given this Act regulates traffic, exempting it could see mayhem on NT roads, including from an increase in unlicensed drivers (licencing being dispensed with), and from an increase in drink- and drug-driving (these no longer being criminal offences).

<sup>6</sup> Such leases cannot be for a private residential purpose, nor for an agricultural, mining or pastoral purpose: s 3.

28	<i>Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010</i>	Given this Act provides for the safe transport of dangerous goods by road or rail, exempting it creates serious risks of injury or death through negligent carriage.
29	<i>Waste Management and Pollution Control Act 1998</i>	Given this Act aims for the protection of the environment through waste management and pollution prevention and control practices, exempting it could result in the destruction of the environment, with human and more-than-human life becoming unviable in the Territory. Furthermore, any accountability measures for harm caused could be vacated. For example, intentionally polluting the environment (s 83) need no longer be an offence.
30	<i>Water Act 1992</i>	This Act provides for the investigation, allocation, use, control, protection, management and administration of water resources. Exempting it means unrestrained exploitation of the NT's water for profit-maximising ends. Water licences can be dispensed with, and no limits need be placed on water extraction and utilisation.
31	<i>Water Supply and Sewerage Services Act 2000</i>	This Act regulates water supply and sewerage services industries. Exempting it would allow sewerage services not to conform to recognised technical standards. This could result in faecal matter flowing freely in the streets, posing a severe public health risk. Infections and reduction in the quality of life would ensue.
32	<i>Weeds Management Act 2001</i>	This Act provides for the management of weeds in the Territory. Exempting it would make it no longer an offence not to comply with a weed management plan. Unmanaged weeds pose threats to agricultural and pastoral enterprises, as well as to domestic and community gardens.

### 3.1. An objection

It is no real objection to say that I have exaggerated the scope of the powers in the Bill on grounds that the exemption power is only applicable to either a 'statutory process' or 'statutory decision', rather than enabling the exemption of the entirety of an Act. A 'statutory process' is any 'process required to be undertaken' under a law: cl 3. A 'statutory decision' means 'a decision to be made' under a law: cl 7(1). I draw no comfort from these vague formulations. Interpreted broadly, a statutory process may well be 99% of an Act, even if it is granted that 100% of the Act may not be exempted. What is certain is that the profit-maximising agenda that is the motor of the Bill will favour statutory interpretations that do not restrict the power of the TC. Even if this objection holds, the possibility for disaster would not thereby be diminished.

### 4. Conclusion

As if a *coup de grâce* were needed, the TC will be neither civilly nor criminally liable for any decisions they make, no matter how much destruction and suffering is caused: cl 104(1).

Kind regards,

Stephen W. Enciso