

# ***Territory Coordinator Bill 2024***

## **Legislative Scrutiny Committee**

The Arid Lands Environment Centre (ALEC) is Central Australia's peak community environmental organisation that has been advocating for the protection of nature and growing sustainable communities in the arid lands since 1980. ALEC is committed to confronting key threats to Country, biodiversity and those impacting the ecological health of the arid and semi-arid lands.

### **1. ALEC's view of the Territory Coordinator Bill**

ALEC strongly opposes the Territory Coordinator Bill.

The Territory Coordinator proposal will give far-reaching and discretionary powers to an unelected bureaucrat (The Territory Coordinator) as well as the Minister for the Territory Coordinator (Currently the Chief Minister Lia Finocchiaro) to majorly change the powers and function of government in the Northern Territory. This is an extreme reform that puts the power of the Northern Territory state and grants its authority to two people: the Territory Coordinator and the Chief Minister. The proposed changes disproportionately benefit big business and will remove scrutiny, assessment and long-standing community, cultural and environmental safeguards. The Bill gives excessive concentration of power to two people which leaves the Northern Territory more vulnerable to state capture, mismanagement and corruption.

The Territory Coordinator proposal is a radical departure from good governance principles, is a dangerous precedent to establish in the Northern Territory and will create chaos and dysfunction around planning, development and environmental assessment across the Northern Territory. This is all occurring in the Northern Territory, which already has arguably Australia's weakest water laws, defunct climate laws and no vegetation laws or biodiversity strategy altogether. Community rights and environmental protections are already largely unfit for purpose and scant across the Territory.

The attacks on 'lawfare', green and red tape is nothing short of populist commentary that is politically expedient. This Bill is shocking. It will fast-track catastrophic and polluting developments which unconditionally deserve rigorous scrutiny and assessment. This Bill ensures the sustained erosion of the public interest, by further transforming the Northern Territory Government as a vehicle that favours the profits and motives of Big Business above all other considerations. This Bill is a clear in its intention to turbocharge the extraction of fracked gas, water for big ag and expedite new mines.

This Bill gets worse than the Exposure Draft with more discretion and power granted to the Territory Coordinator, less transparency, as well as attacks on Northern Territory Heritage, and less protections for sacred sites and the potential undermining of native title rights. However, there is one exception, ALEC strongly welcomes the removal of the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* from the scheduled laws that will be affected in the Northern Territory. We assert strongly that nuclear waste dumps are not wanted and will be strongly resisted in the Northern Territory!

## **2. What is the Territory Coordinator Bill?**

The Territory Coordinator Bill is a dark and backward precedent that risks accelerating state capture, mismanagement and corruption issues across the Northern Territory. We have been told by the Interim Territory Controller at an in person consultation session in Mparntwe Alice Springs that extractive industries have been lobbying the government strongly in favour of the proposed Bill.

The Territory Coordinator Bill has been portrayed by the Country Liberal Party as a key pillar of their economic reform agenda to cut red tape and streamline approvals to rebuild the Northern Territory economy. As the Chief Minister's Media Release stated on 14<sup>th</sup> January 2025, the Territory Coordinator Bill is "one of the most significant economic reforms in our history". They aim to make the Northern Territory the most attractive state or territory in Australia for business, by promoting itself as the best place to attract private investment and stimulate major projects.

To do this, the proposed Bill cuts major corners and fundamentally disrupts long-standing democratic processes, by removing scrutiny and accountability and reforming the entire Northern Territory Government to mirror the interests and needs of big business. It does this without meaningful consultation, and without safeguards to ensure that the environment and culturally significant sites are protected, and community expectations are met.

The Bill is the most extreme legislation of its type in the Country, going far further than any other state or territory in Australia. This is occurring in a jurisdiction with unique and extreme climate and geographical considerations which make development difficult, very remote locations which makes it problematic for projects to be economically viable, and all of this is occurring in the Northern Territory where the scientific, technical and regulatory expertise is lacking to ensure these projects can occur safely, sustainably and as intended. The cutting of corners to suit the wishes of big business is a deeply problematic precedent to establish around planning, development and environmental assessment.

The Bill proposes major changes, via the Primary Principle, the establishment of significant projects, Territory Development Areas (**TDA**), Infrastructure Coordination Area (**ICA**) and Program of Works (**PoW**) programs, as well as step-in powers and exemptions.

### **a. Primary Principle**

The Territory Coordinator Bill proposes the adoption of the Primary Principle, which ensures that the Minister and Territory Coordinator must have regard to 'the primary objective of driving economic development for the Territory or a region of the Territory'.

Economic development is not defined under the Act, but 'economic significance' is defined as:

'A project or development is of economic significance to the Territory, or a region of the Territory, if the project or development facilitates any of the following in the Territory or region:

- (a) private sector investment;
- (b) job creation;

(c) population growth;

(d) development or advancement of an industry.’

It is deeply alarming that ‘economic development’ (recently changed from ‘economic prosperity’), may be used as a tool to override cultural, environmental, social or other economic considerations or safeguards. The definition for economic significance makes it clear that any investment by the private sector is welcome. This is deeply problematic, oversimplified and lacking in nuance or complexity. The Northern Territory Government is effectively outsourcing its planning and development pipeline to the first bidder (corporation) with (potential) capital.

Further, the directive of the primary principle means where the Territory Controller or Chief Minister uses their powers, that public bodies and entities change their set priorities to align with the primary objective of the primary principle.

#### **b. Significant projects and Territory Development Areas**

In making decisions and in having regard to the primary principle and its primary objective of driving *economic prosperity*, the Chief Minister (as the Minister for the Territory Coordinator) has the powers to declare:

- Significant Projects (**SP**): with the aim to ‘effectively expedite industry and economic development by coordinating and directing processes associated with the efficient facilitation, management, and delivery of projects of significance’
- Territory Development Areas (**TDAs**): intended to provide for a ‘whole-of-regulatory-system master planning and coordination mechanism to determine and manage development in geographical areas well suited to supporting economic development outcomes’.
- Infrastructure Coordination Areas(**ICAs**): an ICA declaration can be made under clause 25 “for the purpose of investigating the suitability of the area for the declaration of an ICP”. A declaration can apply to “an area of land or water that is necessary to investigate for the construction or operation of a significant project to be an infrastructure coordination area”.
- Program of Works (**PoWs**): is the coordination of an aggregation of any work, project, service, utility, undertaking or function to be undertaken by a public entity or a proponent of a project, over a set period of time.

A significant project could be the Singleton Irrigation project near Ali Curung, or the Chandler low-level nuclear waste dump near Titjikala. The Beetaloo Basin or the Ti Tree Water Control District could be a Territory Development Area. A program of works could be the roll-out of a significant infrastructure in one or more locations to set up a chemical or industrial processing precinct.

#### **c. Step-in powers**

In areas that have been declared as ‘significant projects’ or ‘Territory Development Areas’, the Territory Coordinator or the Chief Minister (as the Minister for the Territory Coordinator) will have ‘step-in powers’ where they can become the decision-maker under thirty-two different pieces of legislation, from the *Planning Act 1999*, *Local Government Act 2019*, *Water Act 1992*, and

*Environment Protection Act 2019 to the Petroleum Act 1984, Radiation Protection Act 2004 and the Minerals Title Act 2010.*

These step-in powers can result in the Chief Minister or Territory Coordinator from overseeing the regulatory process as intended, or it could result in different conditions or criteria being used to make a decision, fundamentally changing the regulatory process with no oversight or scrutiny.

It is understood that these step-in powers may also apply to a statutory approval even *after* a decision has been made, and that the powers granted under the Territory Coordinator Bill can apply to approvals granted before the Bill is passed into law.

#### Case Study Singleton Station

At Singleton Station, Fortune Agribusiness is conducting its Environment Impact Statement under the *Environment Protection Act 2019*, this process is assessed by the Northern Territory Environment Protection Authority (NT EPA). This project is the first agricultural project in the Northern Territory's history that is required to undergo the highest level of scrutiny, a Tier 3 Environmental Impact Assessment. This is due to the catastrophic impacts that are proposed (lowering the groundwater table by 50 metres, damaging and destroying a 50 kilometre stretch of groundwater dependent habitat, threatening up to 40 sacred sites, and bringing 40,000 tonnes of salts to the surface every year at full production which threatens the viability of agriculture in the region in the medium and long-term) and the extreme levels of uncertainty that still exist around the project (impacts to sacred sites, land condition, groundwater dependent trees, springs soaks and wetlands and the water resource itself). The Territory Coordinator or Chief Minister could 'step-in' and make the final decision on that project instead of the NT EPA.

It is not lawfare, green or red tape is the issue with a project like Singleton Station, it is the nationally significant impacts that are proposed to the environment, cultural values, land condition and to the wider regional economy.

#### **d. Exemptions**

Further and more extreme, the Territory Coordinator Bill grants exemption powers altogether, whereas the Chief Minister or Territory Coordinator may decide that certain legislation does not apply to a certain significant project, or to an entire Territory Development Area. This is outstanding and far-reaching.

Even further, there are essentially no safeguards on how these powers can be used and where they can apply. There is little rigour in the existing process. A safeguard is that the disallowance motion can be brought forward to disallow an exemption notice in the NT Legislative Assembly, but in practice this will not be meaningful as the Northern Territory only has one house of parliament which is majority controlled by the CLP Government, who is introducing these laws.

### **3. Application of Territory Coordinator Bill**

#### **a. General powers**

The Bill gives the Territory Coordinator powers to

- request information, documents and assistance from public entities if that request relates to a significant project, program of works, a TDA or TDA activity;
- direct public entities to coordinate their activities or share information with other public entities if those activities or that information relates to a significant project, program of works, a TDA or TDA activity;
- undertake public consultation on a significant project, program of works, a TDA or TDA activity;
- prepare for the Minister’s approval, an infrastructure coordination plan that is binding on public bodies and public entities.

**b. Powers of the Territory Coordinator and Chief Minister and how they can be used for significant projects, TDAs and work programs**

The Territory Coordinator, and in some cases the Chief Minister, also have powers to undertake a statutory process or make a statutory decision in relation to a works project significance project or TDA under other legislation i.e. 32 different scheduled laws.

Statutory process: Defined as a “process required to be undertaken” under a Scheduled law.<sup>18</sup> For example, this may be the Controller of Water Resources’ (Water Controller’s) consideration of applications for water extraction licences, including mandatory public notification and submission processes.

Statutory decision: Defined as a “decision to be made” under a Scheduled law. <sup>19</sup> For example, the Water Controller’s decision to grant (or refuse) a water extraction licence decision

The Territory Coordinator and sometimes the Chief Minister can:

- Issue prioritisation requests which requires the public body to prioritise this process over all other statutory processes
- Progression request (including start, end or pause)
- Decision request to require a statutory decision maker to make a decision within the specified period
- Step-in notice and take-over decision making or managing of a statutory process, works or activity
- Exemption notice of a significance project, works program or TDA from any statutory decision or process under any part of an Act of Regulations specified in the 32 different pieces of legislation
  - The grounds for an exemption are that there is (1) significant duplication of a part of a statutory process being undertaken in the significant project, program of works or TDA, or (2) the Territory Coordinator considers it necessary to exempt a particular significant project, works program or TDA activity from a statutory decision of statutory process because of the overarching principle of driving economic prosperity in the NT.

- An exemption cannot be given unless a step-in notice has been given for the statutory process or statutory decision to which the exemption notice relates.
- Vary conditions applying to a statutory decision that has already been made, including the powers to alter approvals before the commencement of the Territory Coordinator Act 2025 (if passed).
- In relation to a TDA plan , the Territory Coordinator has powers to
  - Direct public entities to carry out investigations or studies and prepare reports for the RDA with the purpose of development a TDA plan
  - Authorise a person to go onto land to make inspections and install machinery fro the purposed of developing a TDA plan
  - Propose a TDA plan for a TDA that the Minister can approve

**c. What legislation could this apply to?**

The Territory Coordinator Bill is scheduled to apply to 32 different pieces of Northern Territory laws. However, this list is not the full breadth of the Territory Coordinator proposal, as the powers of the Bill also includes “an Act prescribed by regulation”. This will give the Northern Territory Government further Acts and Regulations that it may interact with, by prescribing those regulations. This is a far faster process and occurs without scrutiny. Prescribing regulations are not debated in the Northern Territory Parliament. Acts and Regulations not currently listed could be added in the future.

The current list of 32 acts includes:

- 1 *Building Act 1993*
- 2 *Control of Roads Act 1953*
- 3 *Crown Lands Act 1992*
- 4 *Darwin Waterfront Corporation Act 2006*
- 5 *Electricity Reform Act 2000*
- 6 *Energy Pipelines Act 1981*
- 7 *Environment Protection Act 2019*
- 8 *Fisheries Act 1988*
- 9 *Geothermal Energy Act 2009*
- 10 *Heritage Act*
- 11 *Land Development Corporation Act 2003*
- 12 *Land Title Act 2000*
- 13 *Lands Acquisition Act 1978*

- 14 *Local Government Act 2019*
- 15 *Mineral Titles Act 2010*
- 16 *National Gas (Northern Territory) Act 2008*
- 17 *Pastoral Land Act 1992*
- 18 *Petroleum Act 1984*
- 19 *Petroleum (Submerged Lands) Act 1981*
- 20 *Planning Act 1999*
- 21 *Port of Darwin Act 2015*
- 22 *Ports Management Act 2015*
- 23 *Radiation Protection Act 2004*
- 24 *Radioactive Ores and Concentrates (Packaging and Transport) Act 1980*
- 25 *Special Purposes Leases Act 1953*
- 26 *Territory Parks and Wildlife Conservation Act 1976*
- 27 *Traffic Act 1987*
- 28 *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010*
- 29 *Waste Management and Pollution Control Act 1998*
- 30 *Water Act 1992*
- 31 *Water Supply and Sewerage Services Act 2000*
- 32 *Weeds Management Act 2001*

**d. Where could this legislation apply?**

The Bill is extremely broad, subjective and discretionary on where a significant project or Territory Development Area, or establishing a project of works that could apply. The application of these laws and their extensive powers could apply to huge areas of the Northern Territory.

We know that these laws cannot apply to land held under the *Aboriginal Land Rights Act 1976* (Cth), as territory laws cannot interfere with Commonwealth legislation. This also means that protections that exist under the *Environment Protection and Biodiversity Conservation Act 1999*, cannot be affected. However, this still ensures that huge areas of the Northern Territory lands, waters and coast may be affected by the Territory Coordinator Bill as other safeguards or specificity on where these laws apply do not exist.

Other jurisdictions have been far more transparent and open to where such powers could apply, limiting its powers and authority,

Further, there is no public consultation that is required to establish a significant project, Territory Development Area or a program of works. Only consultation is required in relation to a Territory Development Areas when developing a TDA plan, once a TDA is already in place. Once again, there are no public review or appeal rights in relation to these activities or decisions in the legislation.

#### **e. Consultation and review rights**

There are limited review rights under the Territory Coordinator proposal. Where they do exist they are limited to judicial review, and not merits review.

Regarding consultation, the public must be consulted in relation to a proposed Territory Development Area and a proposed variation to a TDA plan.

#### **4. Conclusion**

ALEC strongly opposes the Territory Coordinator Bill. Its powers are far-reaching and discretionary and results in the dismantling of democratic processes, the sidestepping of scrutiny, the removal of accountability and the erosion of long-standing safeguards that protect community rights, the environment and significant cultural sites. This proposal is a dark and backward precedent for the Northern Territory which will accelerate the risk of state capture, mismanagement and corruption. This reform disproportionately favours the economic interests of big business ahead of community, environment, cultural and other economic values.

Kind Regards,

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