



Environmental Defenders Office

19 February 2025

Committee Secretary
Legislative Scrutiny Committee
Legislative Assembly of the Northern Territory

By email: LA.Committees@nt.gov.au

Dear Committee Secretary,

Territory Coordinator Bill 2025

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Legislative Scrutiny Committee (**the Committee**) on the Territory Coordinator Bill 2025 (**the Bill**).

EDO makes the following comments having regard to the functions of the Committee as set down by Sessional Order 14(3) of the Legislative Assembly.

EDO submits the Bill should be withdrawn. If the Bill is not withdrawn, it should be significantly amended.

EDO draws the Committee's attention to our previous submission on the Territory Coordinator Bill Exposure Draft (**enclosed**).¹ We adopt the recommendations made in our previous submission and provide further comments on the Bill, specific to the Committee's Terms of Reference, to assist the Committee's Inquiry into the Bill.

Insufficient regard to the rights and liberties of individuals²

Lack of independent and appropriate review

The Bill concentrates a significant amount of power in the hands of the Territory Coordinator and the Chief Minister without appropriate checks and balances. Pages 6-9 of our previous submission describes the risks of introducing powers in the way the Bill does.

The exercise of powers by the Territory Coordinator or Chief Minister are not subject to appropriate review. The Bill does not allow for any review of decisions, except through judicial review in the Northern Territory Supreme Court which is a lengthy and costly process, and often a barrier for community members.

¹ Please note that due to amendments made between the Exposure Draft and the Bill as introduced 12 February 2025, the clauses referenced in our previous submission may have changed.

² Terms of Reference, section (3)(b)(iii).

T 1800 626 239
E darwin@edo.org.au **W** edo.org.au

Office: 2/98 Woods St, Darwin NT 0800
Mail: GPO Box 4289, Darwin NT 0801
ABN: 72002 880 864

The power to conduct a review within the Bill, into the exercise of powers by the Territory Coordinator sits with the Territory Coordinator, to investigate concerns about its own operations.³

If the Bill is passed, EDO recommends the Bill should be amended to require any review of the conduct of the Territory Coordinator to be completed by an external and independent agency.⁴ Further, the Bill should require an independent review of the Act's operation after 2 years of commencement to ensure appropriate Parliamentary oversight.

Lack of clarity for when powers can be exercised

The powers to be exercised by the Territory Coordinator are not sufficiently clear and precisely circumscribed.⁵ Given how far-reaching these are they should be unambiguously expressed. We refer to pages 6-9 of our previous submission where we identify the ambiguous limits on powers under the Bill.

Lack of limitations

The Bill allows for other Territory legislation that provides for particular rights to be overridden.⁶

Previous clause 14 of the Exposure Draft prevented the Territory Coordinator from exercising powers in a manner that would interfere with or modify the protection of sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989*, the protection of heritage places or heritage objects under the *Heritage Act 2011*, the operation of the *Aboriginal Land Act 1978*, exercise by Aboriginal persons of rights under the *Pastoral Land Act 1992* and the recognition and protection of native title rights and interests under a law of the Territory. These limitations have been removed from the Bill.

The rights under these, and other rights-conferring Acts affected by powers in the Bill,⁷ should be considered in the assessment of whether the Bill gives sufficient regard to the rights of individuals. In addition, privacy over documents given to responsible entities is not guaranteed if requested by the Territory Coordinator.⁸

³ *Territory Coordinator Bill 2025*, cl 100.

⁴ Terms of Reference, s (3)(b)(iii)(A).

⁵ Terms of Reference, s (3)(b)(iii)(K).

⁶ *Territory Coordinator Bill 2025*, cl 26(2), 45(2), 52(2), 63(1), 76(3) and 95(1).

⁷ See for instance the requirement for a responsible entity to ensure its statutory decisions and processes for activities are consistent with an approved ICP under clause 37(a) of the Bill and the similar requirement for a TDA plan under clause 52(1)(a) of the Bill, as well as the powers under Part 7 of the Bill.

⁸ *Territory Coordinator Bill 2025*, cl 22(1) and (2).

Power to impose conditions previously not authorised

Condition variation notices may be inconsistent with principles of natural justice.⁹ The Bill allows the Territory Coordinator to vary conditions already imposed as a result of completion of a statutory decision-making process as well as impose conditions that could not be imposed by the relevant law the decision is made under.¹⁰ In situations where conditions are included following public consultation but then are removed by a condition variation notice, submitters would be denied procedural fairness. Conditions imposed on their request would have changed, and they have no opportunity to comment to the Territory Coordinator before the variation is made.

Powers to enter land

The Bill includes powers that can interfere with rights of individuals in relation to land.¹¹ While there is a limit on entry to residential premises without consent, the Bill allows a person authorised by the Territory Coordinator to enter land without a warrant for a broad range of purposes.¹² This risks substantially interfering with an owner or occupier's privacy and liberty as well as the enjoyment of their land. The compensation provisions in the Bill leave it for the Territory Coordinator to determine the amount of compensation which is wholly inappropriate when the damage comes from entry authorised by legislation.

EDO recommends that the intrusive powers of entry be removed from the Bill to protect rights over land and privacy. If the powers of entry are retained the compensation amount should be determined independently.

Insufficient regard to the institution of Parliament¹³

The Bill does not sufficiently subject the exercise of the powers of the Territory Coordinator to the scrutiny of the Legislative Assembly.¹⁴

Scope of the scheme can be significantly expanded by the Executive

Regulations can be made to prescribe further Acts (and the Regulations under them) to be a **Scheduled law** which could be affected by the plans made under Parts 4 and 6 of the Bill and powers of the Territory Coordinator under Part 7 of the Bill.¹⁵ For the extent of the powers available under the Bill it is not appropriate to allow its scope to change without further Parliamentary scrutiny. For example, the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* that was removed from the introduction print of the Bill could be re-introduced by subsequent Regulations prescribing that Act to be a Scheduled law.

⁹ Terms of Reference, s 3(b)(iii)(B).

¹⁰ *Territory Coordinator Bill 2025*, cl 85 and 86.

¹¹ Terms of Reference, s (3)(b)(iii)(E).

¹² *Territory Coordinator Bill 2025*, cl 92 and 93.

¹³ Terms of Reference, s (3)(b)(iv).

¹⁴ Terms of Reference, s (3)(b)(iv)(B).

¹⁵ *Territory Coordinator Bill 2025*, cl 105. See also definition **relevant law** and **Scheduled law** in clause 3.

The ability to prescribe further Acts to be Scheduled laws goes against the principle that an Act should only be amended by another Act.¹⁶ While the Bill does not allow for the Regulations to amend the Act, the list of Scheduled laws is set in the Act, and further laws can be added by Regulation so in effect the Legislative Assembly is being asked by the Executive to grant this power. This is not an appropriate de facto delegation of legislative power.¹⁷

EDO recommends if the Bill is to be passed that the power to add laws to the Schedule be amended and retained only for Parliament.

Decisions and processes as legislated by Parliament can be changed by the Territory Coordinator

Condition variation notices are particularly concerning in how they will allow the Territory Coordinator to vary conditions already imposed as a result of completion of statutory decision-making processes and decisions, as well as impose conditions that could not be imposed by the relevant law the decision is made under.¹⁸ This pays insufficient regard to the institution of Parliament,¹⁹ that has already established under the relevant laws currently in existence, the conditions that may be imposed on a decision.

The application of the primary principle in decisions to issue a step-in notice, exemption notice or condition variation notice pays insufficient regard to the institution of Parliament.²⁰ Use of these powers in relation to statutory processes or statutory decisions introduces a new, overarching consideration to that process or decision not provided for in the existing statutory scheme. There is limited Parliamentary oversight for these powers and the Bill does not show on its face how the Territory Coordinator will use these powers; it only lists the Acts that could be affected by these powers. The result is potentially far-reaching and unclear, and the Legislative Assembly is being asked to diminish the considerations it has established for existing statutory schemes.

EDO sets out concerns about the supplanting of statutory schemes through the use of request-related and notice powers under the Bill at page 6 of our previous submission. The interference with existing statutory timeframes and budgets of Agencies that are allocated by Parliament in annual budgets are highlighted as concerns for the institution of Parliament.²¹

Limited Parliamentary scrutiny of decisions

The Legislative Assembly is only given the opportunity to disallow an exemption notice.²² The powers to issue step-in notices and condition variation notices are also extensive powers that should be subject to Parliamentary scrutiny. These are expansive powers affecting a broad range of potential responsible entities undertaking statutory processes and decisions and persons affected by those processes and decisions.

If the Bill is to be passed EDO recommends the tabling and (opportunity for) disallowance motion provisions be included for these powers.

¹⁶ Terms of Reference, s (3)(b)(iv)(C).

¹⁷ Terms of Reference, s (3)(b)(iv)(A).

¹⁸ *Territory Coordinator Bill 2025*, cl 85 and 86.

¹⁹ Terms of Reference, s (3)(b)(iv).

²⁰ Terms of Reference, s (3)(b)(iv).

²¹ Terms of Reference, s (3)(b)(iv).

²² *Territory Coordinator Bill 2025*, cl 82.

Insufficient public consultation

Public consultation on the Territory Coordinator proposal has been limited.

The Department of the Chief Minister and Cabinet (**Department**) provided the Territory Coordinator Consultation Paper to select stakeholders for feedback. It was not until the opposition tabled the Consultation Paper in Parliament on 24 October 2024 that it became public, with feedback being due 1 November 2024.

The Exposure Draft Bill was released 24 November 2024 for public comment due 17 January 2025. The Office of the Territory Coordinator hosted 6 community information sessions during this period. The timing of these sessions and the consultation period fell during the summer holidays when many Territory residents are on leave and may have been unable to engage in the process. In-person sessions were only held in Palmerston, Katherine, Tennant Creek, Alice Springs and Nhulunbuy.²³ No consultation has occurred directly with community members residing in remote areas (beyond engagement through the Department website).

The Consultation Report lacks appropriate detail on the outcome of this consultation process.

- Submissions received have not been published.
- The Department advised how many people provided submissions and participated in information sessions,²⁴ but did not identify what issues were raised by which stakeholders, and their opinion on whether the Bill should proceed.
- The Consultation Report did not include an indication of what recommendations were adopted based on the consultation process or an explanation of what changes were made between the Exposure Draft and the Bill.

The Committee can improve the level of public engagement on the Bill and ensure a more widespread and fulsome consultation process.

EDO notes the Committee has a unique opportunity to call for, and accept, submissions on the inquiry into the Bill.²⁵ Within the Committee's function, to determine whether each submission "meet[s] the criteria to be accepted as a submission...and, where applicable, authorise its publication",²⁶ the Committee can allow for the full ventilation of issues raised about the Bill.

The Committee also has the opportunity to hold public hearings.²⁷ EDO is concerned that the Department's consultation did not allow for members of the public, residing regionally and remotely and who are likely to be directly affected by the exercise of powers in the Bill, to engage in the process. A public hearing held in accordance with Standing Order 189(1) would provide

²³ Department of the Chief Minister and Cabinet, "Consultation Report – Draft Territory Coordinator Bill", (2025), p 4.

²⁴ Ibid, p 2. The Consultation Report notes: "321 participants had attended six Community Information Forums across the Northern Territory, 559 written submissions had been received and 89 meetings were held with 267 individuals representing various sectors" however it is silent on the level of support on the Bill.

²⁵ Department of the Legislative Assembly, "Committee Manual Practice and Procedures November 2024", (2024), p 12.

²⁶ Ibid, p 12.

²⁷ Ibid, p 12.

members of the public who have not been heard with an opportunity to participate and voice their opinions.

EDO suggests the Committee enquire with community members who live in areas that may be designated Territory Development Areas or Infrastructure Coordination Areas and are outside regional centres, to determine if a public hearing is desired. The Committee could then consider taking evidence by holding hearings at a “round table hearing or public forum”,²⁸ in these areas.

Yours sincerely,

Environmental Defenders Office



Elanor Fenge

Managing Lawyer, NT and SA Region



Rufus Coffield-Feith

Senior Solicitor, NT and SA Region

Enc. EDO Submission on the Territory Coordinator Bill (Exposure Draft)

²⁸ Ibid, p 12.



Environmental
Defenders Office

**Submission on the Territory Coordinator Bill (Exposure
Draft) Consultation**

17 January 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Office of the Territory Coordinator Consultation
Department of the Chief Minister and Cabinet
Northern Territory Government
By email: OTC.Consultation@nt.gov.au

For further information on this submission, please contact:

Elanor Fenge
Managing Lawyer

██████████
████████████████████

Rufus Coffield-Feith
Senior Solicitor

██████████
████████████████████

Natalie Czapski
Senior Solicitor

██████████
████████████████████

Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Introduction

Environmental Defenders Office (**EDO**) provides its comments on the Territory Coordinator Bill 2024 Exposure Draft (**the Bill**).

In our submission to the Territory Coordinator Consultation Paper in November 2024, we recommended the adoption of a genuine public consultation process including through the publication of a draft exposure bill for comment.

We welcome the opportunity to review and comment on the draft Bill and explanatory guide.

Nonetheless, the Territory Coordinator (**TC**) model proposed in the draft Bill is highly concerning. The TC would be a non-elected official who works with the NT Minister for the Territory Coordinator (currently the Chief Minister),¹ government agencies and proponents to coordinate and consolidate project approval processes. For more significant decisions, the Chief Minister would act on the advice of the TC.

The Bill concentrates a significant amount of power in the hands of the TC and the Chief Minister without appropriate checks and balances and goes beyond models in place or proposed in other jurisdictions, such as Queensland and South Australia.

EDO's view is that the TC model should not proceed. At the very least, the Bill should be amended and the following recommendations adopted.

Summary of Recommendations

1. Any review into the conduct of the TC must be completed by an external and independent agency.
2. Do not include a "Primary Principle" which overrides non-economic considerations in decision-making.
3. Step-in powers should not be permitted to be exercised after the original decision maker has made their decision (in a bid to override that decision).
4. If a condition variation power is retained, it should be amended to:
 - a. Only allow conditions to be imposed which could have been made by the original decision-maker under the relevant Act;
 - b. Remove the ability to vary conditions which are connected to a previous failure to comply with an NT law, except where the variation is to strengthen the existing condition and/or introduce further measures to prevent further breaches.
5. Any TC model should not include exemption powers.

¹ [Administrative Arrangements Order \(No. 4\) 2024](#) (NT) Sch 2 (p 8).

6. If exemption powers are included, the circumstances for their exercise should be strictly circumscribed and subject to meaningful public consultation and review. Public consultation should be required before decisions are made to declare an area or project a program of works, significant project or Territory development area (**TDA**).
7. Public consultation should be required before decisions are made to declare an area or project a program of works, significant project or TDA.
8. After public consultation has been undertaken on a proposed TDA plan, the public submissions must be provided in full directly to the Chief Minister, rather than only a summary as included in current clause 37 of the Draft Bill.
9. Section 62(1)(a) of the draft Bill should be amended to remove the words “*but a person may not apply for a review of, or appeal against, the Coordinator’s decision under this Act or the relevant law*”. Instead, the same merits review rights should be available, albeit that the TC is the decision-maker whose decision is being reviewed.
10. Review rights should be expanded to include merits review of all decisions under the TC model.
11. Clause 14 of the TC Bill should be amended to make clear that the stated limitations also apply to the exercise of powers by the Minister.
12. The TC Bill should not be amended to allow the TC (or Minister) to exercise powers and functions in relation to statutory decisions or processes under the *Heritage Act 2011* (NT).
13. A list of prohibited areas (like marine parks, conservation areas, mineral reserved blocks and petroleum reserved blocks) where the TC model cannot apply, must be included.

Concerns with the Territory Coordinator Bill

This submission addresses the following concerns with the Bill:

- Significant concentration of power in the hands of the TC and Chief Minister to supplant existing regulatory processes and considerations;
- Elevation of economic considerations over other considerations in decision-making;
- Extraordinary scope and application of step-in and condition variation powers;
- Unprecedented exemption powers without appropriate checks and balances;
- Limitation of public participation and review; and
- Exclusions to the exercise of powers.

Significant concentration of power in the hands of the TC and Chief Minister to supplant existing regulatory processes and considerations

The TC model concentrates a significant amount of power in the hands of the TC and the Chief Minister to exercise extraordinary powers over existing regulatory processes and supplant the considerations usually applying to those processes.

The powers included in the Bill are not subject to appropriate checks and balances. The Chief Minister is the only person with oversight of the TC. The TC can exercise all their powers under the Bill without facing genuine scrutiny. There are only limited processes giving some alternative perspective to the use of the TC's powers, such as requirements to consult with a responsible entity before its statutory decision or statutory process is subject to a prioritisation request, progression request or decision request,² or consult publicly on a proposed TDA plan.³

Once the TC exercises their powers they only have to report on the use of the powers to the Chief Minister. The Chief Minister is the only person publicly held to account for these decisions, through reporting on the TC's use of powers to the NT Parliament. The criteria for the TC and the Chief Minister to exercise their powers under the Bill are vague and lack rigor. There is no clear public interest test ensuring the powers are used in a clear and controlled way, for stated public benefit outcomes. Furthermore, the power to conduct a review into the TC is given to the TC itself, to investigate concerns about its own operations.⁴

The powers of the TC to direct public entities and public bodies to act in particular ways overrides the existing arrangements for statutory decisions and statutory processes. It is not clear within the TC Bill how public entities and public bodies will account for their activities under the *Financial Management Act 1995* (NT) if they are carrying out their activities differently to how their governing Acts and annual plans require them to be carried out.

Existing protections for how information is handled when it is collected by public entities and public bodies in the course of making statutory decisions and carrying out statutory processes are not preserved. It is not clear how the TC model will affect the protections under the *Information Act 2002* (NT). The TC Bill explicitly allows the TC to request information and documents in relation to a significant project, program of works, TDA and TDA activity.⁵

The Scheduled laws, comprising NT Acts and the subordinate legislation made under them, listed in the Schedule to the Bill that would be subject to the TC's powers have been included to address a wide range of public policy issues. These laws could be significantly interfered with under the TC model

² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 52(2), 53(2)(a) and 54(2)(a).

³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 36.

⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 91.

⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(a).

without input from NT Parliament. Furthermore, the Schedule is not exhaustive as the Bill allows for additional Acts and Regulations to be added to the list by prescribing them by Regulation⁶ and without Parliamentary debate.

Recommendation:

1. Any review into the conduct of the TC must be completed by an external and independent agency.

Elevation of economic considerations over other considerations in decision-making

The Bill elevates economic considerations over environmental, cultural, social, health and other considerations contained in existing regulatory schemes. The TC and the Chief Minister must exercise key powers and functions in accordance with the Primary Principle – requiring the decision maker to have regard to the “*primary objective of driving economic prosperity in the Territory*”⁷ as well as the (apparently secondary) consideration of “*the potential social and environmental outcomes for the Territory or a region of the Territory*”.⁸ The Primary Principle prevails to the extent inconsistent with the relevant objects, principles or considerations under another Act under which the TC or Chief Minister are performing functions.⁹ This risks undermining the purposes promoted by other laws in the Territory and introduces regulatory uncertainty. Other regulatory schemes set up statutory decisions to be made with a variety of objectives and considerations, which the exercise of powers under the Bill could override. For example:

- The Primary Principle could apply to decisions under the *Environment Protection Act 2019* (NT) (**EP Act**) including to grant environmental approvals for projects with the potential to have a significant impact on the environment. Under Part 2 of the EP Act, decision-makers are required to consider and apply principles of ecologically sustainable development (**ESD**), such as the precautionary principle and the principle of inter-generational equity, when making decisions. In making decisions that affect the environment, decision-makers, proponents and approval holders must apply a hierarchy of approaches in order of priority: (1) avoid adverse impacts on the environment; (2) mitigate adverse impacts; (3) if appropriate, offset impacts that cannot be avoided or mitigated. The waste management hierarchy similarly has, as a starting point, the avoidance or minimisation of waste.
- The application of the Primary Principle could allow projects of short-term economic benefit to be prioritised, fast-tracked and approved notwithstanding a lack of scientific certainty about environmental impacts or likelihood of causing negative impacts on future generations through land or climate degradation. Projects could also be subjected to less onerous conditions which

⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 3, definition **Scheduled law**, paragraph (b).

⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8(1)(a).

⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8(1)(b).

⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8(2),

subvert decision-making hierarchies on the basis that this would drive “economic prosperity”, regardless of who prospers or where the economic benefits are retained or applied.

To that end, the TC model is very unclear about what or *whose* economic interests are to be prioritised in the context of “*driving economic prosperity in the Territory*”, or when determining that a project or area is significant. The Bill does not, as a bare minimum, require a project to demonstrate its economic worth to all members of the community, or that benefits from a project will be retained locally.

To designate a project as a significant project and then allow the TC powers to be used to promote the project, the Chief Minister only needs to believe on reasonable grounds that one of a loose set of criteria are present.¹⁰ One of the criteria is the *economic significance* of the project to the Territory or a region of the Territory. The designation of a TDA similarly requires the Chief Minister to consider that the area has the potential for “*development or economic significance*” to the Territory or one of its regions, or the potential for infrastructure that would enable, or be enabled by, development of economic significance. This definition of “*economic significance*” is so broad that any economic activity could be captured,¹¹ irrespective of whether economic benefit remains in an area. The project or development must merely facilitate private sector investment, job creation, population growth or “*development or advancement of an industry*” in the Territory or region.

The Primary Principle as applied in the TC Bill even goes beyond the Primary Principle contained in the proposed South Australian model which requires that: the Minister or CGO (Coordinator General’s Office) must have regard to the economic, social and environmental outcomes of the project (for the State as a whole and in the locality of the project), in addition to any relevant objects or principles under the other Act.¹² This principle does not put economic considerations over non-economic considerations and does not override the objects and principles contained in the applicable legislation.

Recommendation:

2. Do not include a “Primary Principle” which overrides non-economic considerations in decision-making.

Extraordinary scope and application of step-in and condition variation powers

EDO is concerned by the proposed step-in, condition variation and exemption powers included in the Bill. The step-in power would allow the TC or Minister to carry out a statutory process and make a statutory decision under an NT law *as though* they are the original decision-maker.¹³ For example, the TC or Chief Minister could act in the place of the NT Environment Minister and determine whether to grant environmental approval for a project, and under what conditions.

¹⁰ *Territory Coordinator Bill 2024 (Exposure Draft) (NT)*, clause 17(1).

¹¹ *Territory Coordinator Bill 2024 (Exposure Draft) (NT)*, clause 4.

¹² *State Development Coordination and Facilitation Bill 2024 (SA)*, clause 4(1).

¹³ *Territory Coordinator Bill 2024 (Exposure Draft) (NT)*, clause 56 and 57.

The TC model will also extend the step-in power to decisions that have already been made, where the TC wants to vary the conditions of that decision.¹⁴ To that end, the TC or Chief Minister can effectively re-make decisions which were made prior to the Bill coming into force. A decision needs to only meet one of a loose list of criteria for such an extraordinary intervention; including criteria such as the consent of the project's proponent,¹⁵ or the TC being satisfied on reasonable grounds the variation to conditions is connected to a previous failure to comply with an NT law.¹⁶ It does not even appear to be a requirement that the condition could have been made as part of the original statutory decision,¹⁷ so that the TC could add or remove conditions the community might not have expected could be included in the original statutory decision at the time it was made.

Concerningly, the inclusion of a criteria to do with failure to comply with an existing NT law appears to almost reward law-breaking behaviour for proponents, allowing the TC to remedy their regulatory failure after the fact. For example, a proponent might have cleared vegetation in breach of a condition of an authority (such as a non-pastoral use permit under the *Pastoral Land Act 1992* (NT) or consent to development in a conservation zone granted under the *Planning Act 1999* (NT)), leading to their meeting the criteria for a step-in power used by the TC to vary the conditions of the authority and resolve the unlawfulness.

Recommendations:

3. Step-in powers should not be permitted to be exercised after the original decision maker has made their decision (in a bid to override that decision).
4. If a condition variation power is retained, it should be amended to:
 - a. Only allow conditions to be imposed which could have been made by the original decision-maker under the relevant Act; and
 - b. Remove the ability to vary conditions which are connected to a previous failure to comply with an NT law, except where the variation is to strengthen the existing condition and/or introduce further measures to prevent further breaches.

Unprecedented exemption powers without appropriate checks and balances

The Bill gives the Chief Minister an exemption power to use for any statutory process or statutory decision under a *relevant law* provided that a step-in notice has already been given.¹⁸ This power would allow the Chief Minister to modify the application of a Territory law in relation to a significant project, works project or TDA activity.¹⁹ The basis for exempting a significant project, works project or TDA

¹⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 70 and 71.

¹⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(b).

¹⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(d)(iii).

¹⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(a). Each of the criteria in subclause (1) are alternatives, and the TC needs to only show one or any other is present to vary the conditions of a notice.

¹⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 64 and 67.

¹⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 64(1).

activity can be to avoid duplication of statutory processes or parts of statutory processes,²⁰ or that the exemption is necessary because of economic considerations as expressed in the Primary Principle.²¹ The Chief Minister only needs to satisfy himself that one of these bases exists and consult with the responsible entity that would be making the statutory decision or running the statutory process the project will be exempt from, as well as the project proponent, to then exempt the project.²²

The checks and balances proposed for the exemption power are far from sufficient. The Consultation Paper states an exemption notice may only be used in “certain circumstances”.²³ However, no particular circumstances are included in the Bill. Instead, the Bill contains very broad criteria that must be satisfied. Because the TC or Chief Minister only need to satisfy themselves one of the criteria is present as they see the circumstances, there is very little rigor to the process. The NT Legislative Assembly has the power to disallow an exemption notice,²⁴ however noting the Legislative Assembly is majority-controlled by the NT Government, this is not an independent check on the exemption power.

Recommendations:

5. Any TC model should not include exemption powers.
6. If exemption powers are included, the circumstances for their exercise should be strictly circumscribed and subject to meaningful public consultation and review.

Limitation of public participation and review

Public consultation

The Bill includes limited requirements to consult with the public. Only in relation to a proposed TDA plan is the TC required to publish the proposed plan online and undertake public consultation in accordance with the regulations. The draft Regulations have not been published and therefore we are unable to comment on their content. Given the potentially far-reaching implications of the TC’s powers, we think that public consultation rights should be included for a wider range of decisions and at the minimum should be required before decisions are made to declare a program of works, significant project or TDA, noting these decisions attract the use of varying powers under the TC Bill.

For consultation on a TDA plan, The TC Bill requires that the TC give the Chief Minister a “summary of the submissions received” rather than a copy of each submission.²⁵ Although, the Chief Minister must consider the submissions received when making a decision,²⁶ the Chief Minister cannot properly do so without receiving all submissions. The stipulation that comments are received by one party (the TC) and then only a summary provided to the Chief Minister as decision-maker puts the TC Bill at odds with

²⁰ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 65(a).

²¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8 and 65(b).

²² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 67.

²³ *Territory Coordinator Consultation Paper* 6.3.1 (p 12).

²⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 69.

²⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 37.

²⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clauses 36-38.

other legislation requiring the relevant decision-maker to directly receive then consider submissions. Examples include:

- provision of written comments on a water extraction licence application to the Controller of Water Resources, who must consider those comments when making a licence decision under the *Water Act 1992* (NT);²⁷
- provision of written comments on an Environment Management Plan application to the Minister for the Environment, who must consider those comments when deciding whether to approve such a Plan under the *Petroleum (Environment) Regulations 2016* (NT);²⁸
- provision of all submissions received in relation to an application for an exceptional development permit to the Planning Commission who must provide them to the Minister under the *Planning Act 1999* (NT).²⁹

Review rights

The proposed model does not allow for any review of decisions made by the TC or Chief Minister, except through judicial review in the Northern Territory Supreme Court. Bringing court proceedings is a costly, time-consuming and risky process. It also requires there to be an arguable legal error with the decision. This is difficult to establish when a law gives decision-makers significant discretion about how and when their powers can be exercised, as is the case under the draft Bill.

The limitations on public review are also such that existing third-party review rights, and in particular, merits review rights, will be usurped if the TC or the Chief Minister uses step-in powers to make decisions in place of the original decision-maker.³⁰ This is made clear under clause 62(1) of the Bill, which provides that a statutory decision under a step-in notice, including to impose a condition, “*is taken to be a decision of the original entity, but a person may not apply for a review of, or appeal against, the Coordinator’s decision under this Act or the relevant law*”. Only judicial review remains available for a person affected by a decision to have it reconsidered.³¹

By way of example, hydraulic fracturing (‘fracking’) projects in the Northern Territory require, amongst other things, an approved Environmental Management Plan (**EMP**) under the *Petroleum (Environment) Regulations 2016* (NT) (**Petroleum Environment Regulations**) for activities with environmental impacts. The Environment Minister’s decision to grant an EMP can be subject to merits review in the Northern Territory Civil and Administrative Tribunal (**Tribunal**).³² If the TC or Chief Minister were to step in and approve an EMP, then no such review would be available. This clearly subverts the merits review

²⁷ *Water Act 1992* (NT), sections 71B(4), 71C(2).

²⁸ *Petroleum (Environment) Regulations 2016* (NT), sections 8A(4), 11(1A).

²⁹ *Planning Act 1999* (NT), section 24(1).

³⁰ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 62(1).

³¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 62(4).

³² *Petroleum (Environment) Regulations 2016* (NT), section 29; Schedule 2.

provisions introduced in response to Recommendation 14.24 of the Final Report of Scientific Inquiry into Hydraulic Fracturing in the Territory.³³

The use of the step-in power would similarly preclude merits review available before the Tribunal otherwise available under the *Water Act 1992* (NT) of decisions to grant water extraction licences, permits to explore for water and permits to interfere with a waterway,³⁴ as well as certain decisions under the *Planning Act 1999* (NT) otherwise subject to such review.³⁵

The TC model should not further limit review rights. It is imperative that current review rights under other Territory laws, like merits review under the Petroleum Environment Regulations, are not displaced under the draft Bill. In addition, merits review should extend to other foundational decisions under the TC Bill, such as to declare a TDA or declare a project as one of economic significance, being pre-conditions to the exercise of wide-ranging powers under the Bill.

Recommendations:

7. Public consultation should be required before decisions are made to declare an area or project a program of works, significant project or TDA.
8. After public consultation has been undertaken on a proposed TDA plan, the public submissions must be provided in full directly to the Chief Minister, rather than only a summary as included in current clause 37 of the Draft Bill.
9. Section 62(1)(a) of the draft Bill should be amended to remove the words “*but a person may not apply for a review of, or appeal against, the Coordinator’s decision under this Act or the relevant law*”. Instead, the same merits review rights should be available, albeit that the TC is the decision-maker whose decision is being reviewed.
10. Review rights should be expanded to include merits review of all decisions under the TC model.

Exclusions to the exercise of powers

Types of decisions

Clause 14 of the draft Bill provides that the TC may not exercise a power in a manner that would interfere with an agreement between the Territory and the Commonwealth; or interfere or modify:⁶¹

- the protection of sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- the protection of heritage places or objects under the *Heritage Act 2011* (NT);

³³ *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory* (2018) Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory, PAGE 421. As EDO have previously noted, even the merits review provisions currently in place do not fully implement Recommendation 14.24, because they eschew wide third-party standing rights in favour of setting out a limited number of parties who can seek review. See our [Summary on Implementation of the Pepper Inquiry Recommendations](#).

³⁴ *Water Act 1992* (NT), section 105D, Schedule 2.

³⁵ *Planning Act 1999* (NT), sections 111-116.

- the operation of the *Aboriginal Land Act 1978* (NT), which regulates entry onto Aboriginal Land as defined under ALRA including the issuance of permits;
- the full and free exercise by Aboriginal Persons of rights reserved in favour of Aboriginal persons under a pastoral lease, as provided for in s 38(1)(n) of the *Pastoral Land Act 1992* (NT); or
- the recognition and protection of native title rights and interests under a law of the Territory.

There is an ambiguity in the TC Bill about whether the same constraints apply to the exercise of powers under the Act by the Chief Minister. In particular, it is unclear whether provisions reading references to the TC as being references to the responsible Minister when the Minister is exercising request powers³⁶ or the step-in notice power³⁷ are intended to, and would in fact have the effect of, applying the clause 14 limitations to the Minister. Although a step-in notice is a pre-condition to exercising the exemption power, only the Minister can issue an exemption notice, so there are no similar provisions reading references to the TC as the Minister. Constraints on the exercise of the exemption power, as set out in clause 64(3), are not as extensive as the limitations expressly provided for the TC in clause 14.

Accordingly, the Bill should be amended to explicitly apply the clause 14 limitations to the Chief Minister in all cases. Of course, irrespective of these broader stated limitations, we note that the TC or Chief Minister cannot modify or exclude the operation of Commonwealth laws.

Application to Heritage Act process

During public consultation sessions on the TC Bill, participants were asked for feedback on whether “the Territory Coordinator should be able to coordinate and streamline (but not step-in or exclude) heritage processes.” EDO’s view is that the TC Bill should not apply to statutory processes or decisions under the *Heritage Act 2011* (NT) (**Heritage Act**).

Recommendations:

11. Clause 14 of the TC Bill should be amended to make clear that the stated limitations also apply to the exercise of powers by the Minister.
12. The TC Bill should not be amended to allow the TC (or Minister) to exercise powers and functions in relation to statutory decisions or processes under the Heritage Act.

Prohibited Areas

The TC Bill would benefit from further examination of the State Development Coordination and Facilitation Bill 2024 (**SDCF Bill**) in South Australia.

Although the SA model has not been finalised and could be amended following completion of the SA Government’s recent public consultation process, it is important to note that the SA model includes

³⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 55(3).

³⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clauses 57(3).

some safeguards that do not appear in the TC Bill. The SA model incorporates “no go zones” – areas where exemption powers cannot be exercised³⁸ including wilderness protection areas and marine sanctuary zones.

A similar approach should be considered which lists, at a minimum, current marine parks, conservation areas, mineral and petroleum reserved blocks and other areas of conservation significance in the Territory where powers contained in the TC Bill cannot be exercised.

Recommendation:

13. A list of prohibited areas (like marine parks, conservation areas, mineral reserved blocks and petroleum reserved blocks) where the TC model cannot apply, must be included.

³⁸ State Development Coordination and Facilitation Bill 2024 (SA), cl 23(3).