Wednesday 19 February 2025

Attention: Legislative Scrutiny Committee
Re: Territory Coordinator Bill

Thank you for considering this contribution. I have already CCed the Committee when submitting a response to the initial call for comments; that document, including a section directly addressing this Committee's Terms of Reference, is included here as appendix.

Now let's consider the revised Bill, with a focus on significant features of concern to the Committee.

Delegation of Powers

The initial draft of the Territory Coordinator (TC) Bill concentrated a lot of authority in the Territory Coordinator, raising concerns about an unelected bureaucrat wielding too much power.
Now, the revised Bill (Serial 17) shifts major decision-making powers to the Minister, making the Coordinator more of an advisor and facilitator rather than an independent regulator. This shift removes concerns about bureaucratic overreach but raises new concerns about Ministerial discretion and accountability.

While the Ministerial model is preferable, without additional safeguards and independent review this revised form still falls short of the Committee's scrutiny principles. From a public administration perspective, moving power to an elected official (the Minister) enhances democratic accountability but reduces checks and balances if too much power is concentrated in one office.

While the Minister is answerable to parliament, and ultimately the electorate, the specific extraordinary powers of notice issuances (for variations, exemptions or call-in decisions) demand broad consultation and the proactive oversight of parliament to protect fairness and natural justice, and to guarantee an appropriate degree of scrutiny and transparency.

Extent of Powers

The Explanatory Statement (ES) states, in *General Outline*, that the Minister's exemption power is limited to specific grounds. Clause 80, *Minister may give exemption notice*, tells us that the Minister must be satisfied that grounds for exemption exist.

Indeed, delegated power should be constrained and subject to oversight. However the Bill grants broad discretionary powers for the Minister to issue Exemption Notices (Section 77), with few procedural safeguards. Ministerial discretion is broad (satisfied, on reasonable grounds) and public consultation is not a mandatory requirement before issuing an exemption. The Minister does not need external approval before issuing an exemption notice. Consultation is required with the responsible entity and applicant but not with the public, Indigenous groups, or independent regulators.

This exemption mechanism allows statutory requirements to be bypassed with minimal procedural safeguards, representing excessive delegation of power. This conflicts with the principle that laws should uphold natural justice and procedural fairness.

Infrastructure Coordination Areas

The ES claims that ICAs are limited to supporting significant projects, but the Bill grants power to designate ICAs beyond specific projects, allowing general land use changes. The Minister can designate an ICA based on the need for investigation, which is not limited to a specific infrastructure project. The boundaries of an ICA can be changed or expanded at Ministerial discretion without requiring a new designation process. Even without an ICP in place, the Territory Coordinator's views must be considered for statutory decisions within an ICA, potentially influencing broader land-use decisions.

Land Entry Without a Warrant

The Bill allows the Coordinator to enter land without landowner consent for planning and survey purposes. Warrantless entry is permitted and that compensation is the only safeguard. This is a direct concern of the committee, from the terms

of reference. The LSC is concerned with protections for property rights – but this clause allows government agents to enter land without landowner consent or judicial oversight. This defies the principle that land entry should be subject to judicial review, except in emergency situations. Land entry should require a warrant or judicial oversight.

Consultation Requirements

The ES suggests that consultation is required before exemptions are issued. However the Bill does not mandate consultation before issuing Exemption Notices, other than with the 'responsible entity'. Any further consultation is discretionary, not mandatory.

Indigenous Land Protections

The Bill does not adequately consider Indigenous traditions and land rights. The revised Bill adds the Heritage Act 2011 to the Schedule, meaning exemptions can override Indigenous heritage protections. The revised Bill loses former Section 14, which previously limited the imposition of Coordinator powers over Aboriginal land. Indigenous stakeholders are now considered "interested parties" (Section 5) in some decisions relating to Infrastructure Coordination Areas, but are not guaranteed consultation before exemptions or step-in actions. Consultation should be required before any decision impacting land rights.

Scope of Schedule

The Bill grants the Executive the power to expand the Schedule through regulation, rather than requiring parliamentary approval. The LSC has responsibility to scrutinise whether legislative power is delegated appropriately. This clause allows the Executive to alter the scope of the Bill without full parliamentary debate. Significant changes in law should require legislative scrutiny, rather than mere administrative regulation.

EPBC & the Bilateral Agreement

The ES claims the Bill respects Commonwealth environmental agreements. Under Part 7, we are assured that *"it is not intended that the Minister or Territory Coordinator would exercise the powers … that would be inconsistent with agreements between the Territory and the Commonwealth."* Clause 85, Permitted variations, (d) assures us of *"consistency between the conditions applying to the decision and any requirements under a Commonwealth law"*

But the revised Bill does not explicitly require compliance with the EPBC Act, opening up potential legal conflict. There remains uncertainty regarding legal consistency and conflicts between NT and Commonwealth laws. The Bill may create situations where NT approvals are fast-tracked, but later found non-compliant with the EPBC Act.

There are a number of ways that application of the proposed Coordinator powers could trigger a formal reassessment of the Bilateral Agreement between the Commonwealth and the Northern Territory. This in turn could have the contrary effect of actually worsening regulatory duplication and investor confidence. (see Appendix)

We should require clear legislative alignment with federal laws to avoid regulatory conflicts. To achieve this, the Bill must show how NT projects approved via the extraordinary powers of this Bill will align with the EPBC Act and Commonwealth environmental obligations. Stakeholders would have greater certainty as to the intended status of the Bilateral if the agreement and the Commonwealth Act were specifically referenced in the Bill.

Accountability and oversight

The ES implies strong oversight of exemption notices, but the Bill does not require proactive review by parliament.

The only formal requirement is that the Minister must table the notice in Parliament within 6 sitting days, but Parliament does not proactively review or approve it. Parliament may disallow the exemption, but only through a separate process, and the exemption remains valid until disallowed. Once an exemption is issued, it is valid unless Parliament actively moves to disallow it. There is no automatic review process, meaning some exemptions may never be scrutinised.

Other

The excision of the Nuclear Waste Prohibition Act is a welcome correction, but the fact that it made it that far illustrates a reckless and imprecise approach to designing this dangerously blunt tool. Similarly, the revised Bill clarifies that exemptions apply only to Scheduled Laws, making its scope more predictable – a welcome correction, but again a troubling indication that this Bill has been thrown together with carelessness inappropriate for the risk inherent to the Bill's extreme Notices powers.

Thank-you for your work.

I expect the Committee will find grounds to recommend the Bill not be enacted in its current form. I hope that this provides the opportunity for the matters raised here to benefit from further thoughtful consideration.

Contact:

Justin Tutty
[redacted]

APPENDIX

T.C. Draft Bill Response

16 January 2025

Attention: Chief Minister's Department; Legislative Scrutiny Committee
Re: Territory Controller Draft Bill

I accept the challenge to address the Draft Bill.

No NT legislation since Self Government matches this Draft Bill's broad implications for governance, economic development, and environmental oversight.

The Bill consolidates decision-making authority under the Territory Coordinator and Minister, diminishing traditional checks and balances. It represents a shift toward prioritising economic outcomes over procedural safeguards in environmental, cultural, and community protections. Despite assurances, the Draft Bill's wide ranging and extreme powers may conflict with existing agreements, such as the EPBC Act or Aboriginal Land Rights protections, leading to potential disputes with the Commonwealth.

While the NT has experienced significant legislative changes in its history, the Draft Bill stands out due to its sweeping powers across sectors and regulatory frameworks; the potential for long-term shifts in governance and development processes; and the risk of overriding established procedural and environmental protections.

That said, the basic concept of coordinating the various regulations applying to identified large development projects is entirely sensible. As is that of removing regulatory duplication, streamlining processes and prioritising important decision making. These objectives are appropriate, and giving responsibility to an appointed Coordinator is sensible. Similarly the declaration of Territory Development Areas makes good sense.

But none of the value of these features need depend upon weakening or bypassing existing measures and assurances for transparency, accountability and review.

The more extreme measures of the draft – the issuance of Notices (exemptions, call-ins and condition variations) – are are neither sensible, appropriate nor welcome. Rather, they are – by design – dangerously blunt tools, that *could* be wisely applied to the stated purpose, but could just as likely be abused by some future government to evade appropriate scrutiny, overturn rightful decisions and award unfair advantage. Together they amount to an anti-democratic assault on NT laws, standards and policies.

Overarching Recommendation: remove all Notices powers (exemptions, step-in decisions and condition variations) from the Bill

Beyond this one simple recommendation, here we take three approaches to the Draft. Firstly, by identifying issues with various features of the Draft Bill. Secondly, by analysing the variation between the Draft Bill and assurances given in associated documents (the leaked discussion paper, and the so-called explanatory document). And thirdly, directly addressing the terms of reference of the Legislative Review Committee.

It emerges that the Draft Bill vastly underestimates the impacts on Commonwealth environmental laws; the alertness of the Commonwealth to NT standards; and the likelihood of an active response. This Draft Bill extends far beyond relatable laws in other jurisdictions that did indeed trigger legislative review by the Commonwealth. Here we find it highly likely that the Draft Bill would prompt the kind of review that would lead to the contrary outcome of increasing duplication and regulatory burden. This unorthodox approach to regulatory reform also risks the perverse outcome of actually worsening investor confidence.

Noting statements by the Chief Minister and interim Coordinator that the powers they intend to grant themselves will not be deterred by public dissent, the recommendations arising from this investigation would go someway towards mitigating the harm presented by the Notices powers of the Draft Bill. Nonetheless, more work will be required, and I remain keen to contribute further to better decision making.

Justin Tutty, [redacted]

On August 25, 2014, Charles Vacca, a firearms instructor in Arizona (USA), was fatally shot while supervising a 9-year-old girl learning to use an Uzi submachine gun. The incident occurred during a shooting range session where the child, under Vacca's guidance, was firing the weapon in fully automatic mode. While manageable by experienced adult users, the Uzi's rapid-fire recoil proved too powerful for the young girl to control. As she fired, the gun veered uncontrollably upward, discharging a round that struck Vacca in the head, killing him instantly.

The tragedy highlighted a profound mismatch between the power of the tool and the capabilities of its user. The Uzi, designed for rapid and sustained fire, demands precise handling and experience to control its recoil. However, a child lacks the physical strength, cognitive awareness, and training required to manage such a high-risk weapon. Despite Vacca's supervision, the safeguards in place were inadequate to account for the inherent dangers of pairing an inexperienced operator with such a powerful firearm.

It's not just a story of tragic miscalculation but also a cautionary tale about the consequences of entrusting high-risk tools to those incapable of managing their demands. It illustrates how even with good intentions, the absence of appropriate safeguards can lead to catastrophic outcomes.

Like placing an Uzi in the hands of a child, this Territory Coordinator Bill offers extraordinary new powers to a governance system that does not have the capacity to wield them responsibly.

The Northern Territory Government operates within a smaller and less developed regulatory framework compared to other Australian jurisdictions. Despite a number of welcome reforms this century, the NT's environmental regulation still languishes behind the rest of the country. For example, The NT is the only jurisdiction in the country without specific laws to regulate land clearing, State of the Environment reporting, and threatened species policy.

The Territory Coordinator Bill introduces sweeping powers, such as the ability to exempt projects from existing laws, override environmental conditions, and take control of key regulatory decisions. These are tools of immense power – designed to cut through red tape and accelerate development – but they also carry the risk of indiscriminate harm if misused.

Like an Uzi handed to a 9 year old, the Territory Coordinator Bill has been placed in the hands of an operator unprepared to control it. The NT Government's regulatory framework lacks the institutional maturity and expertise needed to manage the Draft Bill's broad discretion without risking unintended consequences.

Even if applied with the best of intentions, the Draft Bill could lead to outcomes beyond the NT's capacity to manage. Projects such as the Middle Arm Petrochemical Precinct, which would involve massive industrial development with significant environmental and social implications, exemplify the scale of the challenge. The Middle Arm project, with its potential impacts on protected ecosystems, Indigenous lands, and greenhouse gas emissions, demands a level of governance expertise that is as yet unproven in the NT.

The Territory's shortcomings in the face of this unprecedented massive 50-year project extend well beyond regulation. As an undeniably transformational plan, the NT has yet to see any attempt to commence conducting that transformation within other government departments, such as education or health. Looking at the failure to grasp the opportunity presented by Inpex – a much smaller project, but so far the largest the NT has ever seen – gives little confidence in the NT's capacity to do any better than holding the gate open to foreign resource exploiters. The total mismanagement of the harmful economic and social impacts of boom and bust suffered through the Inpex project does not bode well for the far more challenging social and economic risks presented by the Middle Arm Petrochemical Precinct.

The Draft Bill relies heavily on the judgment of the Territory Coordinator and the Minister – neither of whom has ever performed a similar role – with limited safeguards to prevent overreach. Once the trigger is pulled – whether through granting an exemption notice or overriding a statutory decision – the consequences could escalate quickly and uncontrollably.

Powerful tools require not only skill but also the capacity to anticipate and manage their risks. The Territory Coordinator Bill represents a dangerous mismatch between capability and responsibility. Without significant safeguards, its introduction risks more than just regulatory missteps; it threatens to undermine public trust, investor confidence, and the Northern Territory's long-term development goals.

Despite direct claims to the contrary, the Draft Bill in its current form is altogether reckless, handing highly irregular and inordinate power to two inexperienced individuals. Setting aside the validity of the stated intention to grow private investment, and the evidence-free claim that regulation is the limiting factor, the highly contestable Draft is presented without regard to any other approaches to identifying and pursuing basic economic goals. The broad measures of the Draft Bill represent a scattergun approach, that by design will hit more than the intended target.

Rather than identifying duplication and amending relevant regulations, government has taken the risky direction of granting un-reviewable power to the Chief Minister and the Territory Coordinator to exempt application of any such regulation on an ad-hoc basis. The scheduled Acts subject to the extreme powers of the Draft Bill appear to exceed the realm of private investment.

The risks of this reckless scatter-gun approach to tweaking basic economic measurements extend beyond the likelihood of bypassing appropriate environmental regulation. Even the happy path – minimal targeted application to facilitate large strategic multi-decade projects – poses the risk of prematurely invoking broader social challenges than NT are equipped to manage. Just the enactment of powers that by nature are applied irregularly and inconsistently risks engendering a new vector of investment uncertainty. Further, like an overpowered weapon in a child's hand, the extreme Notices powers of the Draft Bill risk triggering a review of NT responsibilities under the Bilateral Agreement, that could eventually increase regulatory burden.

Process

The poorly defined process surrounding this legislation so far has been inadequate, relative to the risk posed.

At a press conference in December, Ms Finocchiaro would not commit to publicly releasing the feedback report once it was completed. At information sessions since then, suggestions that submitted feedback should be published have been denied.

Asked at a public meeting in Palmerston whether a decisive public rejection of the proposal would be respected, interim Coordinator Mr Knowles assured us that this Bill will be enacted regardless of feedback.

Speaking in Parliament last year, Chief Minister Finocchiaro said:

> There will be people who vehemently oppose our Territory Coordinator legislation; I have no doubt in my mind about that. It just reinforces to me and reignites the fire in my belly to get it done, because that is exactly why we need it. It literally is the reason we need to do this in the first place.

Together these opinions from the two individuals seeking unprecedented power over existing laws are disappointing. By framing opposition as justification, legitimate concerns may be dismissed as mere resistance to progress.

And this Draft Bill does indeed evoke legitimate concerns. Far from underscoring need for change, opposition may highlight valid issues. Proponents of such sweeping changes must demonstrate that the perceived barriers or inefficiencies are real and that the proposed legislation is the best solution.

The online event held this year was tightly locked down, to the point of censorship. The public were invited to a two hour meeting that was wrapped up in 50 minutes. The forum software was uncommonly configured to not only disable chat, but also to hide submitted questions. The compere then had the gall to complain that people had submitted duplicate questions.

As explored here later, assurances offered in both the accompanying documents and the public fora are not reflected in the Draft.

This undeniably lacking style of 'consultation' is consistent with a reading of the Draft Bill as an anti-democratic power grab.

Recommendation: as this initial Draft demands significant amendment, further improved, comprehensive consultation is warranted for the amended version.

Unintended Outcomes

The interplay between regulatory frameworks and business sentiment is complex. Regulatory stability, adequate oversight, and maintaining social license are crucial in fostering a conducive environment for business confidence. Typically, regulatory easing aims to reduce compliance costs and stimulate economic activity, thereby enhancing business confidence. However, in some scenarios it can lead to unintended consequences that may undermine investor sentiment.

Policy Instability

Frequent changes in regulatory frameworks can create an environment of uncertainty, making it difficult for businesses to plan long-term investments. This unpredictability can deter investment, as companies may fear sudden policy shifts that could adversely affect their operations. A recent example is the uncertainty due to rapid policy reversal of the Minerals Resource Rent Tax. While intended to alleviate the tax burden on mining companies, the net impact on confidence was tempered by uncertainty.

Erosion of Social License

Weak regulatory oversight can lead to public backlash, resulting in project delays, increased scrutiny, and potential legal battles. This erosion of social license can make the business environment more volatile, discouraging investment.
In the early 2010s, the coal seam gas industry in New South Wales faced significant community opposition due to environmental concerns. The government's initial lax regulatory approach and inadequate community consultation led to public protests and legal challenges.

International Perception and Market Access

Insufficient regulation can harm a country's international reputation, leading to trade restrictions or loss of market access. Businesses reliant on exports may suffer from decreased demand, affecting profitability and confidence.
Australia's live cattle export industry faced challenges in 2011 when reports of animal cruelty in importing countries surfaced. The initial lack of stringent export regulations led to international criticism and a temporary ban on live exports.

Perceived regulatory weaknesses can lead to systemic issues within industries, resulting in loss of consumer trust and increased scrutiny. The subsequent regulatory backlash can create an uncertain business environment, affecting confidence. *The Financial Services Reform Act 2001 aimed to streamline the regulatory environment for financial services. However, over time, inadequate regulatory oversight contributed to misconduct within the banking sector, culminating in a Royal Commission in 2017.*

In fact, there are several ways that the Draft Bill could paradoxically undermine investor confidence, despite its stated aim of fast-tracking development. While the Draft Bill aims to streamline project approvals, it risks creating a highly uncertain and contentious investment environment, making NT less attractive to both domestic and international investors.

Despite the limitation of third party review, the broad, discretionary powers granted under the Draft Bill remain likely to face legal challenge. If these powers are exercised in ways perceived as undermining environmental or cultural protections, projects may face significant delays or cancellations due to litigation. The risk of protracted legal battles increases the uncertainty surrounding project approvals and timelines.

Potential Breach of International Agreements

If the Draft Bill’s powers are used to facilitate projects that harm internationally recognised MNES (e.g., Ramsar wetlands, migratory species habitats), Australia may breach its treaty commitments. International reputation matters to investors, especially in sectors reliant on global partnerships or markets. The perception that NT development projects are linked to breaches of Australia’s treaty obligations could deter foreign investment and harm relationships with international stakeholders.

Erosion of Trust in Regulatory Consistency

The Draft Bill undermines regulatory predictability by concentrating vast discretionary powers in the hands of the Territory Coordinator and the Minister. This creates a sense of regulatory volatility, where rules and conditions for one project may not apply to others. Exemption notices could override laws that developers assumed were foundational to their risk assessments. Investors prefer clear and consistent regulatory frameworks to assess risk. The perception of unpredictable and arbitrary decision-making makes it harder for proponents to accurately model project costs, timelines, and compliance requirements.

Weakening of Indigenous and Community Partnerships

The Draft Bill's lack of robust safeguards for Indigenous consultation and cultural heritage protections risks alienating Traditional Owners and Indigenous communities who play a critical role in providing social license for major projects. Industry has increasingly recognised the importance of Indigenous partnerships and community buy-in for successful project development. A backlash from Indigenous communities or local stakeholders could deter investment, as opposition leads to reputational risks, delays, or legal challenges.

Federal Intervention

Broad powers under the Draft Bill, such as overriding or varying environmental conditions, could lead to systemic breaches of the EPBC Act or the NT/Commonwealth Bilateral Agreement. If the Commonwealth imposes stricter oversight, NT projects could lose their competitive advantage in terms of streamlined approvals. Increased scrutiny or Federal oversight would add complexity, cost, and time to project development. Investors may shift focus to jurisdictions with more stable regulatory arrangements.

Diminished Global ESG Ratings

Modern investors increasingly weigh Environmental, Social, and Governance (ESG) criteria when evaluating projects or jurisdictions. The Bill's potential to undermine environmental safeguards and sideline community and Indigenous engagement, could harm NT's global ESG reputation. Jurisdictions with low ESG ratings are seen as high-risk and less attractive for long-term investment. Investors seeking to avoid reputational damage or comply with ESG mandates may avoid NT projects altogether.

Misalignment with Broader Economic and Energy Trends

The Bill appears to prioritise fossil fuel and resource extraction projects (e.g., gas industrialisation in the Beetaloo Basin) at a time when global markets are transitioning toward renewable energy and sustainable development. This misalignment could leave NT projects stranded or underutilised if global demand for fossil fuels diminishes. In this way, the Draft Bill could discourage investors focused on long-term, climate-aligned portfolios. Investors looking to fund sustainable and renewable energy projects may avoid jurisdictions that double down on fossil fuel infrastructure. Misalignment with global trends could reduce the NT's competitiveness in attracting forward-looking investment.

Undermining credibility of NT Governance

The Bill's broad powers, combined with limited checks and balances, may lead to perceptions of political interference in regulatory processes. If projects are seen as being approved or facilitated through irregular means, rather than on merit, NT governance could be viewed as weak or prone to favouritism, eroding public trust in NT's institutions. A jurisdiction perceived as politically unstable or inconsistent in applying rules is less attractive for long-term investments. Regulatory credibility is a key component of investment decisions, especially for industries with large upfront capital costs.

Inconsistent Use of Exemption Notices

If exemption notices are used inconsistently or perceived as favouring certain proponents, it may lead to disputes within industry. Companies denied exemptions may challenge the equity and legitimacy of NT's decision-making framework. Proponents may feel NT has created an uneven playing field, further deterring investment. They may be left uncertain what support the Coordinator powers might grant their project, and whether competitors will enjoy the same. Investors seek jurisdictions where decisions are applied uniformly and predictably.

Justice Pepper Inquiry

The Draft Bill risks eroding any social license established by the Pepper Inquiry by appearing to sideline hard-won environmental and social safeguards. This could lead to more organised and effective opposition to resource projects, and greater national and international scrutiny of NT's development agenda. Public protests, media campaigns, and reputational risks can make NT projects less attractive, even for industries accustomed to environmentalist opposition. Public resistance could also slow down project approvals or create a hostile operating environment for developers.

Applying the highly irregular step-in and exemption powers to hydraulic fracturing would not only squander any confidence developed through the Pepper inquiry. Use of the proposed Territory Coordinator powers to exempt or override environmental decision making for fracking and gas industrialisation could also impact upon the integrity of the Bilateral.

The Draft Bill, with its broad powers to exempt projects (including those related to fracking and gas industrialisation) from legal requirements, or to override environmental decisions, raises serious concerns about the integrity of the Bilateral Agreement between the Commonwealth and the Northern Territory (NT) under the EPBC Act. When applied to fossil fuel projects, these powers could create situations that directly or indirectly conflict with the principles and standards required to maintain the agreement.

If the Territory Coordinator exempts fracking or gas industrialisation projects from NT laws that form part of the accredited environmental assessment process under the Bilateral Agreement, this could lead to a failure to assess the direct and indirect impacts of such projects on Matters of National Environmental Significance (MNES), such as threatened species habitat; migratory species; and water resources. Use of the Territory Controller's powers could weaken mitigation measures required under NT laws that are relied upon to meet Commonwealth standards for MNES protection.

For example, the proposed industrialisation at Middle Arm could significantly impact MNES like water resources or migratory birds. Exemptions issued for such projects could bypass or dilute the assessment process, violating the requirements of the EPBC Act.

The power of the Territory Coordinator to override past or pending decisions could create situations where merit-based conditions or refusals designed to protect MNES are reversed or weakened in favour of project approvals. Decisions about fossil fuel projects, such as fracking approvals, could be made under political or economic pressure, disregarding environmental risks.

For example, if a fracking project threatens MNES-listed species or water resources, and the NT environmental regulator recommends stringent conditions or rejection, the Territory Coordinator could override this decision to prioritise industrial development. Such interference would violate the Commonwealth's requirement for independent, merit-based decision-making free from political or administrative bias, a cornerstone of the Bilateral Agreement.

The Territory Coordinator could impose or authorise alternative processes that do not meet the standards of the EPBC Act for assessing MNES impacts. This could result in failure to apply the significant impact guidelines for MNES. It could lead to inadequate consideration of cumulative impacts from multiple gas projects in the Beetaloo Basin or Middle Arm. Such a decision could allow insufficient consultation with stakeholders, including Indigenous Traditional Owners, about the environmental risks.

For example, fracking developments in the Beetaloo Basin could impact groundwater systems, migratory birds, or adjacent MNES-listed wetlands, requiring rigorous cumulative impact assessments. Short-circuiting this process risks non-compliance.

The Territory Coordinator's power to exempt projects could lead to removal or relaxation of offset requirements designed to compensate for MNES impacts, or inadequate monitoring of conditions imposed to protect MNES.

Transparency and Public Confidence

The use of broad discretionary powers by the Territory Coordinator to exempt or override environmental decisions could result in reduced transparency. Public consultation or stakeholder engagement could be bypassed or truncated.

Perceptions of favouritism toward fossil fuel proponents could lead to challenges against the legitimacy of the NT's assessment process. If decisions about Middle Arm industrialisation or Beetaloo fracking are made without proper public consultation or explanation, public-led scrutiny of NT processes could intensify.

Cumulative Risks of Fossil Fuel Industrialisation

The scale of proposed gas industrialisation in the NT (including Middle Arm and Beetaloo Basin) involve cumulative impacts on MNES. If the Territory Coordinator's powers are used to approve projects in isolation, these cumulative impacts may not be properly assessed. Failing to address cumulative impacts is a direct violation of the EPBC Act's framework for MNES protection, triggering potential Commonwealth intervention.

For example, multiple fracking operations across the Beetaloo Basin could deplete water resources and fragment habitats for MNES species. Exempting projects from laws that require cumulative assessments would breach bilateral agreement requirements.

Cumulative impacts refer to the combined effects of multiple activities, developments, or decisions over time on Matters of National Environmental Significance (MNES) and broader environmental values. These impacts are significant in areas with intensive industrial development, such as the proposed Middle Arm Petrochemical Precinct. For example, air quality degradation from multiple industrial facilities contributing pollutants.

The Bill grants the Territory Coordinator (and the Chief Minister) broad powers to exempt projects from certain environmental laws and override or assume control of decisions on past or pending environmental assessments.

Those powers could lead projects to bypass key cumulative impact assessments if laws mandating these evaluations are overridden. By taking control of decisions, the Territory Coordinator may prioritise isolated approvals over holistic environmental planning. Without transparent processes or public consultation, there's a heightened risk that cumulative impacts will not be adequately identified or mitigated.

The Bill risks creating a fragmented regulatory environment, where projects are assessed in isolation without considering their broader environmental footprint. For example, individual fracking projects in Beetaloo Basin may have manageable impacts on water resources when assessed independently, but collectively, they could lead to aquifer depletion or contamination.

The NT's current Strategic Regional Environmental and Baseline Assessment (SREBA) provides foundational data for areas like the Beetaloo Basin, but exemptions or reduced oversight could weaken its contribution. Without consistent application of baseline data, projects may proceed with incomplete knowledge of cumulative risks, undermining MNES protections.

When projects are exempted from rigorous assessment, mitigation measures like offsets may not address cumulative losses effectively. For example, habitat destruction from multiple gas wells might require landscape-scale offsets, but exemptions could lead to piecemeal or inadequate solutions.

Compliance with the EPBC Act

The Commonwealth requires that cumulative impacts be adequately assessed and managed under bilateral agreements. Failure to meet these standards risks Commonwealth responses including legal challenges, review or suspension of the Bilateral Agreement, or direct intervention in NT projects. The Commonwealth could also consider additional oversight conditions for cumulative impacts as part of the bilateral agreement, by auditing NT decisions on cumulative impact management.

To mitigate risks to the Bilateral Agreement and ensure robust cumulative impact management, the following recommendations are offered:

Recommendation: Expand SREBA processes to include regular updates and broader regional integration, ensuring that cumulative risks are continually monitored and addressed.

Recommendation: Require cumulative impact assessments for all major projects, even those exempted under the Territory Coordinator's powers.

This should include both the infrastructure level (joint assessments for interconnected projects like gas wells and pipelines) and the bio-regional level (broader regional considerations for air, water, and habitat impacts).

Define cumulative impacts and require their assessment for interconnected projects, mandate baseline data integration from regional studies and declare methodologies and thresholds for assessing cumulative impacts.

Recommendation: Exclude Matters of National Environmental Significance (MNES) or laws affecting MNES from the Territory Coordinator's exemption powers.

Specify that no project impacting MNES may bypass environmental assessments or conditions mandated under NT or Commonwealth law. Require Territory Coordinator decisions to be reviewed for MNES implications before approval.

Recommendation: Mandate a public consultation period for projects impacting MNES or other significant environmental values.

Require the publication of cumulative impact assessments, including methodologies and findings, before decisions are finalised. Allow for independent reviews or appeals of Territory Coordinator decisions by stakeholders.

Recommendation: Incorporate specific references to EPBC Act guidelines and standards for environmental assessments, including cumulative impacts.

Require that all assessments under the Territory Coordinator align with the EPBC Act's significant impact guidelines. Mandate that exemptions or decisions consider Commonwealth requirements for MNES protections.

Recommendation: Establish an independent oversight body to review decisions by the Territory Coordinator, focusing on cumulative impacts.

Create a Cumulative Impact Review Panel to oversee large-scale projects with potential regional impacts. Empower the oversight body to veto or revise decisions that fail to meet environmental standards.

Recommendation: Introduce requirements for ongoing monitoring and periodic reporting of cumulative impacts for approved projects.

Require developers to fund cumulative impact monitoring programs for the life of their projects. Mandate periodic reports to be submitted to both NT and Commonwealth authorities, with findings made publicly available.

Recommendation: Restrict the Territory Coordinator's ability to override or assume control of decisions, particularly those involving MNES or cumulative impacts, to prohibit overrides of decisions made by environmental regulators without a transparent, evidence-based justification.

Require independent review of any proposed overrides to ensure compliance with environmental standards.

Recommendation: Require the Territory Coordinator to align project approvals with existing regional environmental planning frameworks.

Mandate the integration of Strategic Regional Environmental and Baseline Assessment (SREBA) findings into project decisions. Ensure that regional plans consider the cumulative impacts of multiple projects within a given area.

Recommendation: Include provisions for mandatory consultation and collaboration with Commonwealth environmental agencies for projects with potential cumulative impacts on MNES.

Require Territory Coordinator decisions to be reviewed by the Department of Climate Change, Energy, the Environment, and Water (DCCEEW) for MNES compliance. Mandate joint decision-making for high-risk projects affecting MNES.

Recommendation: Introduce penalties for non-compliance with cumulative impact assessment and management requirements.

Recommendation: Impose fines or project delays for proponents who fail to comply with assessment or monitoring obligations.

Recommendation: Establish enforcement mechanisms for breaches of cumulative impact conditions.

These amendments aim to address some of the gaps and risks associated with the Draft Bill, particularly in managing cumulative impacts. They aim to prioritise environmental protection, transparency, and compliance with the EPBC Act, while the Bill's provisions emphasise expedited development, exemptions, and centralised decision-making. This tension arises because the Draft Bill potentially prioritises economic and project facilitation over rigorous environmental oversight.

The Draft Bill does not explicitly reference the EPBC Act, MNES, or the NT/Commonwealth Bilateral Agreement, leaving room for ambiguity. Without clear cross-referencing, compliance with the EPBC Act may rely entirely on Ministerial directions, which could vary depending on political or administrative priorities. While Section 14(1)(a) and Section 64(3)(a) imply compliance with the EPBC Act, the absence of explicit references to MNES and Commonwealth obligations creates uncertainty.

The Bill is notably silent on aligning its powers with Commonwealth environmental laws, raising concerns about potential conflicts with the EPBC Act and the Bilateral Agreement between the Northern Territory Government and the Commonwealth. While the Explanatory Guide and Consultation Paper emphasise respecting existing environmental laws, the Bill itself does not include any enforceable requirement to adhere to Commonwealth standards.

Section 67 allows the Minister to issue exemption notices, which can exempt proponents from complying with NT laws or processes. There are no exclusions preventing exemption notices from overriding environmental laws critical to protecting MNES, such as:

- NT's Environmental Protection Act 2019;
- water management laws and regulations (relevant to EPBC Act's Water Trigger); or
- habitat and biodiversity protection mechanisms.

Exemptions issued under the Bill could result in projects proceeding without adequate consideration of cumulative impacts on MNES.

Sections 56–58 grant the Territory Coordinator broad "step-in" powers to assume decision-making authority. There are no requirements for the Coordinator to:

- Consider impacts on MNES,
- Refer projects that may trigger the EPBC Act to the Commonwealth,
- Ensure decisions align with the NT/Commonwealth Bilateral Agreement.

If step-in powers are used to expedite decisions for major projects (e.g., gas industrialisation or fracking), there is no safeguard to ensure that MNES impacts are assessed or managed.

Sections 70–72 allow the Territory Coordinator to vary or revoke conditions of approval for projects, including environmental conditions. There are no provisions to require MNES impacts to be reassessed, or ensure consistency with EPBC Act conditions, where applicable. This could lead to conditions designed to mitigate risks to threatened species, Ramsar wetlands, or water resources under NT laws being weakened, potentially violating the Commonwealth's MNES protections.

Section 28 allows the Minister to designate Territory Development Areas (TDAs) to facilitate priority projects. There are no safeguards to assess MNES impacts before designating a TDA, or exclude areas that contain MNES or sensitive ecological values.

The Draft Bill does not require the NT Government, Minister, or Territory Coordinator to consult with the Commonwealth regarding projects that may impact MNES, or refer projects to the Commonwealth under the EPBC Act.

The NT/Commonwealth Assessment Bilateral Agreement under the EPBC Act requires the NT to conduct environmental assessments in a way that meets Commonwealth standards for MNES protections. The broad powers provided in the Bill, including exemptions and step-in decisions, could conflict with the NT's obligations under this agreement if projects bypass routine environmental assessment, or MNES protections are not adequately considered or mitigated.

The Draft Bill provides no explicit guarantees to align its powers with the Commonwealth's EPBC Act or to ensure the protection of Matters of National Environmental Significance (MNES). Key mechanisms like exemption notices, step-in powers, and condition variations could undermine NT's obligations under the EPBC Act and Bilateral Agreement. This lack of safeguards poses a significant risk to MNES and could trigger Commonwealth intervention.

The Bilateral Agreement requires the NT to meet EPBC Act standards in environmental assessments. Without explicit reference to this agreement, the Draft Bill risks creating conflicts that could jeopardise the bilateral arrangement.

While Section 14(1)(a) could be read as ensuring compliance with the EPBC Act, several risks remain. If the Minister issues an exemption notice under Section 67 that overrides NT laws aligning with the EPBC Act, there is no explicit safeguard to ensure federal obligations are still respected. Exemptions from NT water or biodiversity laws could indirectly impact MNES, triggering EPBC Act obligations but leaving room for procedural gaps.

The Territory Coordinator's powers to vary or revoke conditions (Sections 70–72) could unintentionally weaken safeguards critical to MNES protection, potentially breaching EPBC Act obligations.

Recommendation: explicitly reference the EPBC Act, with a clause requiring all decisions under the Draft Bill to align with federal obligations under the EPBC Act, particularly for MNES.

Recommendation: explicitly reference the NT/Commonwealth Bilateral Agreement

Recommendation: require consultation with Commonwealth authorities for projects that may impact MNES, ensuring alignment with EPBC standards.

Recommendation: disallow overriding environmental protections critical to MNES by exemptions, step-in powers or conditions review.

Likely EPBC impacts

The Draft Bill proposes establishing an Office of the Territory Coordinator in the Northern Territory (NT) with broad powers to facilitate significant projects. These powers include the authority to exempt specific proponents from certain laws and to assume extraordinary control over decisions, both past and pending.

This legislative proposal has raised concerns regarding its potential impact on the existing Assessment Bilateral Agreement between the Commonwealth and the NT under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The Bilateral allows the NT to conduct environmental assessments on behalf of the Commonwealth for actions that may significantly impact Matters of National Environmental Significance (MNES).

The Bilateral accredits specific NT assessment processes to ensure they meet Commonwealth standards for evaluating impacts on MNES. If the Territory Coordinator exercises powers to exempt projects from these established processes, it could lead to assessments that do not align with the accredited standards, thereby breaching the Agreement.

Exempting certain projects from environmental laws, assuming control over decisions or overriding approval conditions could result in inconsistent application of environmental protections. This inconsistency may compromise the integrity of assessments related to MNES, conflicting with the objectives of the EPBC Act and the Bilateral Agreement.

The broad discretionary powers granted to the Territory Coordinator could lead to perceptions or instances of political or administrative interference in environmental assessments. Such interference would undermine the merit-based decision-making processes required under the Agreement, potentially leading to its suspension or termination.

Bypassing standard assessment procedures and exempting projects from legal requirements can erode public confidence in the environmental assessment process. A lack of transparency and accountability may violate the principles underpinning the Bilateral Agreement, which emphasises rigorous and open assessment processes.

Should the Territory Coordinator's powers be exercised in ways that conflict with the Bilateral Agreement, the Commonwealth may:

- Review and potentially suspend or terminate the Bilateral Agreement
  This action would necessitate separate Commonwealth assessments for projects impacting MNES, leading to increased regulatory complexity and potential delays for project proponents.
- Impose additional oversight or conditions
  To ensure compliance with the EPBC Act, the Commonwealth might implement stricter oversight or impose additional conditions on NT assessment processes.

Either of these reactions would impose the contradictory outcome of further duplicating and complicating assessments. To maintain the benefits of streamlined assessments and uphold environmental protections for MNES, it is crucial that any new legislation aligns with the standards and processes established by the EPBC Act and the Bilateral Agreement.

Beyond MNES Concerns

Non-MNES concerns, such as local biodiversity, pollution, and land management issues not covered by the EPBC Act, fall primarily under the jurisdiction of state and territory governments. The Commonwealth generally does not retain direct responsibility for these non-MNES risks or conditions unless a specific national interest or legislative provision applies.

But while the Commonwealth's authority under the EPBC Act focuses on MNES, there are limited circumstances where the Commonwealth retains some influence over non-MNES concerns.

Proposed reforms to the EPBC Act suggest introducing National Environmental Standards, which would set minimum requirements for environmental management across all jurisdictions, including for non-MNES concerns. If implemented, these standards would compel states to meet baseline requirements for issues such as biodiversity, climate resilience, and water management.

For non-MNES concerns, the state and territory governments have primary responsibility and are generally required to meet their own environmental standards, which are legislated under state laws.

However, the Commonwealth imposes indirect standards in two main ways:

- Integration through Bilateral Agreements
  Under assessment bilateral agreements, states conduct environmental assessments for both MNES and non-MNES issues. While the Commonwealth directly oversees MNES, it expects states to provide an integrated assessment that aligns with national standards for environmental quality.
- Harmonisation with MNES Protections
  States are expected to ensure that non-MNES conditions do not undermine MNES protections. For example, a state-imposed condition allowing partial clearing of vegetation might still need to align with Commonwealth-imposed conditions protecting an MNES species within the same area.

If the Northern Territory (NT) government falls short of the Commonwealth’s expectations under the Bilateral Agreement when assessing and managing matters other than MNES, it could have significant consequences for both the integrity of the Agreement and the NT’s ability to manage development projects effectively.

While the Bilateral Agreement primarily governs MNES, shortcomings in the handling of non-MNES matters can indirectly and directly undermine the Agreement's objectives and operational success.

The Commonwealth expects the NT to manage those matters to a high standard, as these are often interconnected with MNES protections. Shortcomings in assessing and managing non-MNES issues such as groundwater use, local biodiversity, and pollution could:

- Compromise MNES protections
  Poor management of non-MNES issues, such as the local impacts of fracking or waste discharge, may create secondary or cumulative risks to MNES like threatened species or Ramsar wetlands.
- Erode the integrity of assessments
  If non-MNES matters are inadequately addressed, the Commonwealth might perceive NT assessments as incomplete or substandard, even for MNES.

Failure to manage non-MNES conditions could diminish the effectiveness of overall environmental regulation, as poor oversight in one area often spills into others. Inadequate monitoring of non-MNES impacts, such as water pollution or habitat fragmentation, may affect MNES indirectly. Failure to enforce non-MNES conditions could create broader environmental degradation that undermines the Commonwealth’s trust in NT governance.

Impact on Bilateral Agreement

The Commonwealth might impose additional compliance requirements or revoke NT authority over MNES assessments if overall regulatory failures compromise MNES protections. Non-MNES matters often contribute to cumulative impacts on the environment, which the Commonwealth expects the NT to evaluate holistically. If non-MNES issues are ignored or poorly managed, cumulative risks to MNES may go unassessed.

For example, large-scale fracking operations in the Beetaloo Basin involve local issues like groundwater use, air pollution, and infrastructure impacts. If these non-MNES factors are not rigorously assessed, they may collectively harm MNES, such as migratory bird habitats or water-dependent ecosystems.

The Commonwealth could determine that NT processes fail to address cumulative risks, requiring the Commonwealth to intervene or withdraw from the Bilateral Agreement.

The Commonwealth expects NT decision-making to be transparent and participatory, even for non-MNES matters. Falling short of these expectations – such as bypassing public consultation or failing to disclose assessments for non-MNES impacts – could erode public trust and undermine confidence in the validity of MNES assessments conducted under the same processes. A lack of transparency could lead the Commonwealth to question the credibility of NT assessments overall, risking the suspension of the Bilateral Agreement.

If the NT uses powers of the Draft Bill to exempt proponents from non-MNES conditions or override merit-based decisions, it could result in inconsistent application of environmental protections. Non-MNES matters, such as noise, pollution, or localised habitat impacts, may be disregarded, undermining broader environmental goals. Exercising the Notices powers risks mismanagement of interconnected issues. Non-MNES risks could exacerbate MNES impacts if decisions prioritise economic interests over environmental integrity.

This could erode Commonwealth confidence in NT processes, potentially triggering a review of the Bilateral.

If the NT government falls short in its management of non-MNES matters, consequences could arise for the Agreement. The Commonwealth could impose stricter conditions on NT assessments, requiring more detailed justifications for how non-MNES risks are handled. Weak management of non-MNES matters would reduce the Commonwealth’s confidence in NT governance, increasing scrutiny and delaying project approvals. These consequences would run counter to the stated intent of streamlining assessments and approvals.

While non-MNES matters are primarily the NT’s responsibility, poor assessment and management of these risks can have significant indirect impacts on the Commonwealth's oversight of MNES. To maintain the Bilateral Agreement, the NT must manage non-MNES matters to a high standard, ensuring that local environmental issues do not compromise MNES protections or broader environmental integrity.

Commonwealth’s expectations under the Bilateral Agreement

The Commonwealth expects the Northern Territory Government to meet certain standards for merit-based conditions under the framework of the EPBC Act when managing both MNES and other matters. These standards are designed to ensure that decisions are based on scientific evidence, environmental considerations, and legal obligations, rather than political or administrative interference.

The Commonwealth's expectations for fair, open, and participatory decision-making under bilateral agreements are grounded in both the objectives of the EPBC Act itself and the principles outlined in the agreements. These expectations aim to ensure that environmental decision-making processes for MNES meet high standards of transparency, public accountability, and fairness.

Standards for Fair, Open, and Participatory Decision-Making

Transparency

Ensure that the public, stakeholders, and decision-makers have access to all relevant information about environmental assessments and decisions. The Commonwealth expects:

- Public availability of information: Environmental assessment documents (e.g., Environmental Impact Statements, referrals, impact assessments) must be made available to the public for scrutiny.
- Clear rationale for decisions: Assessment reports and decisions must include detailed explanations of how environmental impacts on MNES were assessed and addressed, as well as the conditions imposed.
- Publication of conditions and outcomes: Final approval decisions, including the conditions imposed on projects to protect MNES, must be publicly accessible.

see:

- Section 74(3) of EPBC requires public notification of referrals.
- Section 170A requires transparency in decision-making, with key documents published on the public register.
- Clause 5.1.4 of the Bilateral Agreement requires NT processes to ensure transparency consistent with EPBC Act requirements.

Participation

Ensure that stakeholders, including local communities, Indigenous Traditional Owners, and environmental groups, can contribute to assessments. The Commonwealth recognises the importance of public input in environmental decision-making. Expectations include:

- Public consultation opportunities: Environmental assessments must include periods for public submissions on project proposals and environmental impact statements (EIS).
- Meaningful engagement with Indigenous communities: The rights, perspectives, and Traditional Knowledge of Indigenous peoples must be incorporated, particularly when projects may affect cultural sites, sacred lands, or native title areas.
- Consideration of submissions: Decision-makers must consider public and stakeholder submissions in finalising decisions or conditions.

see:

- Section 131A of EPBC requires public consultation when significant impacts on MNES are likely.
- Section 136(2)(f) of EPBC mandates consideration of public comments in determining approval conditions.

- Clause 6.4 of the Bilateral requires NT processes to include robust public consultation mechanisms that align with the EPBC Significant Impact Guidelines.

Merit-Based Decision-Making

The Commonwealth demands that decision-making under the bilateral agreement is based on merit, with decisions reflecting environmental evidence, legal obligations, and appropriate consultation rather than external influences. Expectations include:

- Evidence-based decisions: Approvals and conditions must reflect robust scientific evidence and technical expertise, particularly for impacts on MNES.
- Where necessary, decisions must incorporate input from independent experts or advisory bodies, such as the Threatened Species Scientific Committee, to ensure conditions are well-founded and defensible.
- Conditions should be demonstrably aligned with best practices and ensure effective mitigation, avoiding arbitrary or politically motivated measures.
- Freedom from political or economic interference: Decisions must not prioritise development interests over environmental outcomes.
- Monitoring and reporting: Mechanisms must be in place to ensure compliance with conditions and to transparently report on their effectiveness.

see:

- Section 145D(3)(b) of EPBC requires consideration of "economic and social matters," but only in balance with the primary objective of environmental protection.
- Section 146 of EPBC provides for the creation of Strategic Assessments to guide evidence-based decision-making.
- Clause 6.6 of the Bilateral requires that NT decision-making processes uphold merit-based and evidence-driven principles consistent with Commonwealth guidelines.

Mechanisms

The EPBC Act mandates the maintenance of a publicly accessible register where all relevant documents, such as referrals, environmental assessments, decisions, and conditions, are published. This ensures transparency and provides a platform for public scrutiny.

NT assessment systems must provide public access to assessment documents.

Public consultation periods are required for most referrals and assessments under the EPBC Act. The bilateral agreement ensures the NT must provide equivalent opportunities for public input.

If there are concerns about breaches of fairness or transparency, the Commonwealth can suspend or terminate the Bilateral Agreement if the NT fails to meet its obligations. The Commonwealth can choose to conduct its own assessment of a project if the NT assessment is inadequate.

Potential Risks

The proposed Bill could conflict with these Commonwealth standards if its powers undermine:

Transparency: Exemptions or overrides that bypass public consultation or obscure environmental assessments from public view would breach bilateral agreement standards.

For example, exempting a fracking project from publishing an EIS would violate the Commonwealth's transparency expectations.

Participation: Indigenous groups and local communities could be excluded from meaningful consultation if exemptions or decision-making overrides are used.

For example, ignoring submissions opposing a project that impacts MNES-listed wetlands would breach the participatory standards.

Merit-Based Decision-Making: Using political or economic priorities to override conditions or approval refusals would undermine evidence-based processes.

For example, overriding a regulator's rejection of a Beetaloo Basin project based on water resource impacts would contravene the merit-based principles required under the bilateral agreement.

If so, the Commonwealth could:

- Suspend the Bilateral Agreement – requiring the Commonwealth to directly assess all MNES-triggering projects in the NT, increasing regulatory complexity for proponents;
- Impose Additional Conditions or Oversight – requiring NT processes to include stricter safeguards for transparency, consultation, and merit-based decision-making; or
- Legally Intervene – the Commonwealth retains the power to review and override decisions that fail to protect MNES.

Reviewing the Bilateral Agreement

There are a number of prior instances where Bilateral Agreements under the EPBC Act have been tested, reassessed, or enforced by the Commonwealth. These include instances in NSW and Queensland where relaxed regulation for fossil fuel expansion triggered Commonwealth intervention. These cases typically arise when a state or territory's environmental processes are perceived to fall short of meeting the Commonwealth's requirements for protecting MNES. Such scenarios can trigger reviews, suspensions, or additional oversight by the Commonwealth government.

The Commonwealth has a clear history of testing, reassessing, and enforcing bilateral agreements to ensure state and territory environmental processes align with EPBC Act standards. Examples from around the country demonstrate that inadequate management of environmental risks – whether MNES or non-MNES – can trigger reviews, stricter oversight, or suspension of bilateral agreements.

If NT processes, such as those potentially influenced by the Draft Bill, were to bypass or weaken environmental assessment and decision-making for non-MNES matters (e.g., fracking or gas projects), they could undermine MNES protections, prompting the Commonwealth to reassess or suspend the bilateral agreement.

Commonwealth powers to review the state of the bilateral

The Commonwealth has mechanisms to address administrative changes or deficiencies under bilateral agreements without necessarily waiting for specific bad outcomes to occur. While examples of intervention tend to emerge *after* environmental harm or dubious decisions, there have been instances where action was taken preemptively or due to concerns about the administrative framework itself, rather than specific project outcomes. Routine functions of auditing, review and reporting are available to the Commonwealth to maintain integrity of the Agreement.

In 2013, the Queensland government introduced major reforms to streamline environmental approvals, cutting back state-level oversight in favour of fast-tracking large-scale resource projects, primarily by centralising processes under the new State Assessment and Referral Agency (SARA).

Concerns arose that the administrative framework created under these reforms would fail to adequately assess cumulative impacts and protect MNES under the EPBC Act. These concerns included water resources impacted by CSG developments, and threatened species habitats in areas like the Galilee Basin and the Great Barrier Reef catchment.

The Commonwealth determined that the state's changes weakened environmental oversight, particularly in groundwater extraction related to coal seam gas projects. The Commonwealth conducted a review of the bilateral agreement and temporarily suspended parts of the agreement for high-risk projects. The review focused not on individual decisions but on systemic shortcomings in Queensland's administrative processes.

The Commonwealth retained or introduced additional approval and review layers for projects deemed high-risk. The revised Agreement he agreement expanded the scope of Commonwealth monitoring for MNES, required Queensland to follow stricter consultation and reporting processes, and imposed higher administrative demands to ensure compliance with EPBC standards.

Recommendation: environmental law reform in NT must prioritise meeting national standards. Implementation of new NT laws to control land-clearing and protect biodiversity, as well as policies and strategies for addressing extinction and eco-system health must be prioritised, so that any review of the Commonwealth/NT Agreement is on sound footing.

Recommendation: seek, and share, Commonwealth advice re the likely impact on NT's carriage of responsibilities re MNES.

The Queensland example demonstrates how streamlined processes can fail when cumulative impacts, community trust, and MNES protections are inadequately addressed. However Queensland had a much larger regulatory framework than the NT when these issues emerged, suggesting that the NT's smaller system might face even greater challenges.

The drive for fossil fuel development in the NT has already earned Commonwealth scrutiny. The Strategic Regional Environmental and Baseline Assessment (SREBA) was a concept initiated by the Northern Territory Government. However, the Commonwealth's oversight of the NT's fracking framework and its alignment with the Bilateral under EPBC remains a critical part of this story.

The fracking review process in the Northern Territory, consisting of a moratorium and public inquiry that focused on the Beetaloo Basin, also already engaged Commonwealth oversight that tested the Bilateral Agreement.

In September 2016, the NT Government imposed a moratorium on fracking for onshore gas exploration and production due to widespread environmental, social, and Indigenous concerns. The NT subsequently established the Scientific Inquiry into Hydraulic Fracturing (commonly known as the Pepper Inquiry) to evaluate the risks and benefits of lifting the moratorium.

The Pepper Inquiry Report (April 2018) recommended lifting the moratorium conditionally, contingent upon the NT government implementing 135 recommendations. One key recommendation was the need for a Strategic Regional Environmental and Baseline Assessment (SREBA) to gather baseline data before large-scale fracking could resume.

While the NT introduced the SREBA framework as part of its own response to the Pepper Inquiry, the Commonwealth's oversight under the EPBC Act remained active because of concerns that fracking activities might impact Matters of National Environmental Significance (MNES), such as:

- Water resources (via the Water Trigger, section 24D and 24E of the EPBC Act),
- Threatened species and ecological communities,
- Ramsar wetlands,
- Migratory species.

The Commonwealth was particularly concerned about systemic risks to MNES if the NT's regulatory framework (including the SREBA process) failed to meet appropriate environmental standards. This interaction effectively tested the bilateral agreement in the following ways:

Commonwealth Monitoring of NT Administrative Changes

While the NT independently implemented the SREBA process, the Commonwealth monitored whether the new framework met the standards required under the bilateral agreement to protect MNES. Key areas of Commonwealth scrutiny included:

- *Baseline data quality*: whether the SREBA process would provide sufficient data to properly assess fracking's cumulative impacts on MNES.
- *Transparency*: ensuring the NT's regulatory process included rigorous public consultation and independent scientific input.
- *Water resources*: whether fracking activities could trigger the EPBC Act's Water Trigger, requiring direct Commonwealth assessment if risks were not adequately addressed.

Commonwealth Environment Minister Melissa Price (2019) indicated that the Commonwealth was watching the NT's response closely to ensure MNES protections remained intact under the bilateral agreement.

Testing the Water Trigger

The Water Trigger in the EPBC Act (introduced in 2013) requires Commonwealth assessment for coal seam gas and large coal mining projects if they are likely to have a significant impact on water resources. Fracking activities in the Beetaloo Basin posed potential risks to groundwater-dependent ecosystems and aquifers, which are vital for local communities, agriculture, and MNES-listed species. The NT's framework for resuming fracking was tested against the Commonwealth's Water Trigger standards. If the NT's regulatory system failed to

- adequately assess water impacts;
- monitor cumulative effects; and
- impose rigorous conditions to protect water resources,

the Commonwealth would have been obliged to step in and conduct its own assessment.

The NT's SREBA process and regulatory reforms were closely scrutinised to ensure compliance with Commonwealth water standards. The Commonwealth retained the option to intervene if NT processes were insufficient.

Cumulative Impacts

The Pepper Inquiry highlighted cumulative impacts as a significant concern, particularly for MNES like water resources and threatened species habitats. The Commonwealth monitored whether the NT's framework, including the SREBA and new assessment processes, could properly evaluate cumulative risks from multiple fracking projects, and address indirect and long-term impacts on MNES.

Testing of the Bilateral Agreement occurred here because the EPBC Act requires robust cumulative impact assessment. If NT processes were found inadequate in this regard, the Bilateral Agreement could be reassessed or suspended.

Commonwealth Reserve Powers to Reassess

Although the NT resumed fracking under its revised framework, the Commonwealth retained the ability to call in projects for direct EPBC Act assessment if NT assessments were incomplete or insufficient, or MNES risks were not adequately addressed.

The Beetaloo Basin fracking approvals provided an ongoing test of whether the NT's revised administrative framework could meet EPBC standards under the Bilateral.

In 2021, the Commonwealth provided funding for baseline water studies in the Beetaloo Basin to independently verify the NT's data collection efforts, underscoring continued federal oversight.

While no formal breach of the Bilateral Agreement occurred, the Commonwealth's close scrutiny of the NT's fracking framework – particularly regarding water resources and cumulative impacts – demonstrates that the Bilateral was being tested. The following factors helped the NT avoid triggering direct Commonwealth intervention:

- implementation of the SREBA to gather baseline environmental data.
- regulatory reforms addressing the cumulative impacts of fracking on water and biodiversity.
- improved transparency and public consultation processes (e.g., publishing SREBA outcomes).

However, the ongoing public and legal challenges to Beetaloo Basin projects, particularly regarding the Water Trigger, highlight the fragility of the NT's regulatory framework and its ability to meet Commonwealth standards under the Bilateral Agreement.

Accountability

The severe discretionary powers of the Draft Bill could potentially be abused to shield decisions from third-party review, effectively undermining transparency, accountability, and fairness in governance. These powers could be used to block or limit review processes, including:

- granting exemption notices that remove statutory obligations,
- centralising power through step-in decisions,
- allowing unilateral changes to project conditions, and
- circumventing public consultation and transparency.

Without explicit safeguards, the Bill risks undermining accountability and creating a governance framework where affected stakeholders are unable to contest decisions, no matter how arbitrary or harmful.

Section 67 allows the Minister to issue exemption notices, which can exempt a project or proponent from complying with NT laws and regulations. If key requirements (e.g., environmental assessments, cultural heritage consultations, or licensing conditions) are exempted, there is no substantive basis for third parties to challenge the decisions. By issuing broad exemption notices, the Territory Coordinator (or Minister) could create a regulatory vacuum, leaving no procedural or legal grounds for third parties to review or contest the project.

Similarly, Sections 56–58 grant the Territory Coordinator the power to step in and take over decision-making responsibilities from other statutory bodies. These decisions, made unilaterally by the Territory Coordinator, could bypass standard processes that include avenues for public comment, objections, or appeals. By centralising authority, the Territory Coordinator could override statutory bodies designed to ensure accountability, limiting third-party oversight.

Sections 70–72 empower the Territory Coordinator to vary or revoke existing approval conditions, potentially altering environmental, social, or cultural safeguards imposed on a project. Conditions essential to mitigating risks – such as pollution limits or cultural heritage protections – could be weakened or removed to favour project proponents. Stakeholders might struggle to challenge these decisions if the legal basis for review is undermined.

The Draft Bill does not mandate public consultation for the issuance of Notices for exemptions, step-in decisions, or condition variations – enabling decisions to be made without appropriate stakeholder input. By avoiding consultation, the Territory Coordinator (or Chief Minister) could effectively shield decisions from public scrutiny, leaving third parties unaware of their opportunity to contest decisions or contribute to the process. Improved reporting could help discourage the Territory Coordinator (or Chief Minister) from enacting those powers solely for the purpose of evading public scrutiny.

Recommendation: require publishing detailed rationales for decisions, particularly around exemption notices, step-in powers and condition variations.

Impacts on Indigenous rights

Communities with limited political power, such as remote Indigenous groups and low-income populations, are likely to face greater risks from the Territory Coordinator Bill 2024 due to its discretionary powers. These risks stem from their reduced capacity to influence decisions, protect their interests, and respond to negative outcomes. The Draft Bill's powers might exacerbate inequalities in environmental impacts.

Remote Indigenous groups often lack the resources, legal representation, or organisational capacity to effectively engage in decision-making processes. This disadvantage would be exacerbated by the Draft Bill's provisions to fast-track decisions.

The exemption notice powers (Section 67) allow the Minister to bypass legal obligations that might otherwise require consultation or assessment of social and cultural impacts. Step-in powers (Sections 56–58) could centralise decision-making, sidelining community voices entirely.

Communities who already struggle to have their concerns heard are less likely to influence or contest decisions under a framework that diminishes transparency and public participation.

Environmental degradation often affects geographically and economically vulnerable communities more acutely. These groups are frequently located near large-scale industrial developments due to historical land use patterns or economic necessity. Exemptions and streamlined approvals could facilitate projects with significant environmental impacts near or on Indigenous lands. These communities may lack the means to address the effects of environmental degradation.

Large-scale industrial projects often promise economic benefits, such as job creation and infrastructure development. However, these benefits frequently bypass remote and marginalised communities. Remote Indigenous communities might bear the environmental and social costs without receiving proportional economic advantages. Inequitable distribution of benefits widens existing socio-economic gaps, leaving impacted communities with environmental burdens but no long-term improvements in living standards.

Marginalised groups often face cumulative environmental harms, where multiple projects compound existing challenges, such as health risks from pollution or loss of natural resources. When this happens, communities already dealing with significant stressors face heightened risks, perpetuating disadvantage.

Commonwealth laws

The Draft Bill could conflict with the Land Rights and the Native Title Acts in several ways, particularly through its broad discretionary powers to exempt projects from existing regulations or override statutory processes. These federal laws are designed to protect Indigenous land rights and cultural heritage, and any state or territory law that undermines their application could create legal, social, and political conflicts.

Aboriginal Land

The Aboriginal Land Rights (Northern Territory) Act 1976 provides a framework for recognising and protecting Indigenous ownership of land in the NT. It requires consent from Traditional Owners for activities on Aboriginal land, and negotiations with land councils for land use agreements.

But the Territory Coordinator's powers, such as issuing exemption notices (Section 67) or overriding statutory decision-making (Sections 56–58), could facilitate projects that bypass the consent requirements of Traditional Owners or Land Councils. A resource development project might be exempted from needing approval under NT laws, but if it affects Aboriginal land, this would conflict with ALRA's requirement for Traditional Owner consent.

Native Title Land

The Native Title Act 1993 recognises and protects native title rights and interests held by Indigenous people over land and waters. It requires consultation and negotiation with native title holders for activities that may affect their rights. The Future Acts regime outlines the process for developments on native title land.

The Draft Bill's powers to vary or revoke conditions of approval (Sections 70–72) could weaken protections for native title holders if conditions designed to mitigate impacts on native title land are removed. Fast-tracking decisions through step-in powers may sideline native title holders, reducing the time or scope for meaningful consultation.

Both Acts emphasise the importance of procedural fairness and consultation with Indigenous stakeholders in decision-making processes. The Draft Bill's provisions, however, lack explicit requirements for consulting Traditional Owners or native title holders, to allow for decisions to be fast-tracked and bypassing established consultation frameworks. This opens yet another avenue whereby the extreme nature of the Draft Bill risks inviting scenarios that present the contradictory outcome of worsening social license and investor certainty.

Exemption notices and step-in powers might undermine procedural fairness by enabling decisions to proceed without input from affected Indigenous parties. Such decisions could be challenged as breaches of the NTA's procedural requirements, leading to delays, court orders, or project invalidation.

The ALRA and NTA are federal laws, meaning that any NT legislation that undermines their application could invite Commonwealth intervention. The NT/Commonwealth relationship could be further strained if projects approved under the Draft Bill violate obligations under these federal acts, or if judicial review exposes systemic failures to protect Indigenous rights.

The Draft Bill does not explicitly override core protections under ALRA or the Sacred Sites Act. However, Indigenous Territorians are still vulnerable to losing certain rights and interests indirectly through the discretionary application of the Draft Bill's powers.

Rights to Consultation

Under the Native Title Act 1993 and the Aboriginal Land Rights Act 1976, Traditional Owners and native title holders must be consulted before developments occur on their lands. Land Councils play a critical role in negotiating land use agreements and ensuring Indigenous voices are heard.

But the Bill does not mandate consultation with Indigenous groups for some of the most extreme new powers, including exemption notices, step-in decisions, variations to project conditions (Sections 70–72), and decisions to fast-track projects. This risks denying meaningful participation in decisions about land use and development, undermining self-determination.

Recommendation: protect existing requirements of consultation with Indigenous Territorians for any decision made subject to Notices powers

Rights to Review and Appeal

Traditional Owners and Native Title holders, have legal avenues to challenge decisions affecting their lands and rights through administrative review or judicial appeal. But under the Draft Bill, Exemption notices and step-in powers can bypass or override processes that would normally trigger Indigenous consultation, reducing opportunities for review. Decisions made with these powers, without transparency or consultation, leave Indigenous groups with fewer grounds for effective legal challenges. In this way, the Draft Bill threatens the ability of Indigenous Territorians to contest decisions that may harm culturally significant sites, livelihoods, or land use rights.

Recommendation: add explicit inclusion of relevant appeal rights of Indigenous Territorians to decisions which are subject to Notices powers

Cultural Heritage

Sacred sites are protected under the Sacred Sites Act, which requires consultation with Indigenous custodians and assessment of potential impacts. The Sacred Sites and Heritage Acts are not listed as Scheduled Acts, and are protected from any interference under Section 14. However those protections do not apply to decisions made by the Minister.

Recommendation: explicit cultural heritage protections in the Bill should extend to exercise of the powers of the Act by the Minister

Economic Rights

Land use agreements often include provisions for Indigenous economic participation, such as jobs, royalties, and business opportunities. Fast-tracked projects risk prioritising industry timelines over equitable negotiations, reducing Indigenous communities' ability to secure fair economic benefits. Conditions ensuring equitable benefit-sharing could be vulnerable under Section 70. Indigenous groups may bear the environmental and social costs of projects without receiving proportional economic benefits.

Recommendation: add a sub-clause to Section 71 d) requiring that a variation to an existing condition should respect Indigenous economic objectives

Environmental impacts for Indigenous stakeholders

Indigenous communities often rely on environmental protections to safeguard lands and waters which are integral to not just the wider economy but their immediate cultural and economic livelihoods. Environmental assessments typically consider Indigenous interests in land and resource use. In this way, Indigenous Territorians can depend more on environmental assessment. But the most extreme powers of the Draft Bill could waive environmental assessment requirements, removing protections for ecosystems that Indigenous groups depend on.

Fast-tracked approvals might not adequately consider cumulative environmental impacts, disproportionately affecting Indigenous lands. Opacity of the extreme new powers diminishes Indigenous groups' ability to hold decision-makers accountable. Limited access to information jeopardises social license and undermines informed advocacy and trust in decision-making processes.

Other risks

The NT's development agenda is heavily tied to fossil fuel extraction, industrial projects, and infrastructure development. The Draft Bill risks reinforcing a high-risk dependency on these sectors at a time when global markets are transitioning to renewables. This dependency might exacerbate NT's vulnerability to economic downturns, stranded assets, and international reputational damage.

A key assumption of the Draft Bill is that delays in development are primarily caused by regulatory inefficiencies. However, many delays stem from inadequate preparation by proponents (e.g., insufficient environmental impact data, poor consultation with communities or Traditional Owners). Fast-tracking through discretionary powers may exacerbate delays by triggering judicial challenges, public opposition, or federal intervention. The Bill's core premise could be flawed, as streamlining does not address these deeper systemic issues.

National Climate and Environmental Goals

The Draft Bill could directly conflict with Australia's commitments under the Paris Agreement, which emphasises reducing carbon emissions, as well as national policies aimed at promoting renewable energy and protecting biodiversity. By prioritising projects like Middle Arm or Beetaloo, the Draft Bill might put the NT - and by extension, Australia - on a collision course with its international climate and environmental obligations, creating risks for federal intervention or reputational harm.

The NT's Unique Governance Context

The NT operates under a governance framework that differs significantly from states, including a smaller, less resourced regulatory system (which compounds risks when handling complex projects) and the ever-present threat of direct Commonwealth oversight (more easily asserted over a territory than a state). The NT's distinct context amplifies the risks of overreach or underperformance when wielding powers like those in the Draft Bill.

The Draft Bill's lack of consultation requirements risks alienating Indigenous communities, whose lands and cultural heritage are often directly affected by the types of projects the Bill aims to facilitate. This could lead to long-term social

and legal conflict, particularly if exemption notices bypass cultural heritage protections. Indigenous opposition could delay or derail projects, compounding risks to investor confidence.

The Territory Coordinator's central role could result in a bottleneck for decision-making, concentrating too much authority in one office. A conflict of interest, as the Coordinator may be incentivised to prioritise expediency over thoroughness or fairness. This centralisation risks eroding public trust and amplifying perceptions of regulatory arbitrariness, harming both governance and investor confidence.

International investment

International investors value predictability and stability in regulatory frameworks. Frequent changes or discretionary overrides under the Draft Bill could create a volatile environment that undermines investment confidence.

Weakening environmental regulation could trigger investor-state disputes (ISDs) if it leads to perceived breaches of international trade or investment agreements. These disputes occur when foreign investors believe their investments are negatively impacted by regulatory actions – or a lack thereof – that contradict commitments under international treaties.

Most trade agreements include clauses protecting foreign investors from actions that devalue of their investments, or fail to provide a stable and predictable regulatory environment. If a discretionary exemption or regulatory override disproportionately harms a foreign investor's project or fails to protect their investment from risks (e.g., environmental disasters caused by nearby projects), the investor could argue that the NT Government has breached its obligations under relevant treaties.

Discretionary powers, such as exemption notices or step-in decisions under the Draft Bill, may result in regulatory inconsistency. Projects favoured by exemptions may receive lighter regulatory treatment, while others are burdened with full compliance. Foreign investors affected by such inequities may claim discrimination or unfair treatment under international law. For example, a foreign renewable energy investor might claim unfair treatment if their project is subjected to stricter environmental requirements, while a domestic gas or mining project benefits from exemptions.

If weakened regulations lead to environmental damage, foreign investors may argue that their assets were harmed due to the NT Government's failure to enforce adequate protections. eg: a foreign-owned tourism venture reliant on pristine ecosystems could bring a dispute if nearby industrial activities – exempted or fast-tracked under the Draft Bill – cause environmental degradation. This could constitute a failure to provide full protection and security.

Other impacts are not so direct. If weakened environmental regulations harm investors operating across multiple jurisdictions, disputes could arise over uneven regulatory impacts. Indirect expropriation occurs when government actions substantially deprive investors of the value or use of their investment without direct seizure. Weak or inconsistent regulation could result in devaluation of natural resources or land due to environmental harm.

Recommendation: comprehensively review likely detriments to international investment in the NT, relating to increased uncertainty, inconsistency and degraded investments. Such review should inform further public consultation.

Nuclear Waste

The Schedule includes 32 acts, ranging from infrastructure-related laws (e.g., Building Act 1993, Planning Act 1999) to more niche or restrictive laws that appear misaligned, or of uncertain relevance (e.g., Nuclear Waste Prohibition Act 2004, Radiation Protection Act 2004).

The Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004 (NT) primarily prohibits the storage, transport, and disposal of intermediate and high-level nuclear waste, and it's challenging to identify other types of projects that the Act might obstruct. The Nuclear Waste Act does not impose blanket prohibitions on all radioactive materials. Instead, it focuses on high-level and intermediate-level nuclear waste associated with activities like nuclear power generation or spent fuel reprocessing. The Act allows for the transport, storage, and handling of low-level radioactive materials, that may be used or created in the course of drilling, mining or other industrial activity.

To underscore this clear focus, it explicitly excludes radioactive materials used in mining exploration, and produced as mining waste. Low-level radioactive materials commonly associated with NT mining activities (such as uranium tailings, Naturally Occurring Radioactive Materials from other mining, and radionuclides used in oil and gas exploration) are already exempt from the Act's prohibitions. There is no need for further exemptions through the Territory Coordinator Bill to handle such materials under existing law.

Part 2 of the Act, which explicitly lists the prohibited actions, has only two items:

- a person must not construct or operate a nuclear waste storage facility; and
- a person must not transport nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory

This Prohibition Act was passed 20 years ago, to stand as NT parliament's legal opposition to plans to dump nuclear waste in the NT. It simply prohibits handling, transport and storage of long-lived intermediate-level and high-level nuclear wastes (materials which are only found in the form of spent reactor fuel). As such, it offers no 'step-in' point : there is no decision facilitated by the Act. So its inclusion in the Schedule could only apply to the extreme and highly irregular exemption powers.

The Prohibition Act (perhaps unnecessarily) states that it does not override commonwealth law:

> **5. Application of Act**
> **(1)** A provision of this Act relating to the transport, storage or disposal of nuclear waste does not have any effect to the extent it is inconsistent with a law of the Commonwealth but the provision must not be taken to be inconsistent with that law if it can be complied with without contravention of that law

One detail that the Territory Controller exemption powers might apply to is the requirement for a public inquiry. But this hardly amounts to a disincentive to private investment in the NT.

> **14. Public inquiry into impact of nuclear waste storage facility**
> If a licence, exemption or other authority to construct or operate a nuclear waste storage facility is granted under a law of the Commonwealth, a Committee of the Legislative Assembly nominated by the Minister must inquire into, consider and report on the likely impact of the facility on the cultural, environmental and socio-economic wellbeing of the Territory

Further, exempting the Prohibition Act would enable NT departments to actively cooperate in establishing a nuclear waste dump. The new powers could also be used to limit scrutiny of plans to import and dump nuclear waste in NT.

There's not a lot of nuclear waste in Australia – just the (comparatively small) amount produced from decades of operation of small research reactors at Lucas Heights. After successive failures to earn community license for a Commonwealth nuclear waste facility, the regulator ARPANSA has declared it adequate and appropriate that those small wastes remain on site, until its eventual decommissioning. But just as that assurance took the heat out of the nuclear waste debate, the AUKUS agreement turned it back on, with revelations that Australia will be left holding the hot potato of spent reactor fuel from visiting USA submarines.

Valid concerns at the inclusion of this Act in the Schedule have been met with clumsy misinformation. At a public webinar, an officer of the interim coordinator asserted that this Act is included because some mining operations have

had to interface with the Prohibition. If that doesn't satisfy, in a media article on ABC on Thursday 16th January, the Chief Minister Ms Finocchiaro offered a different explanation, claiming the inclusion was due to "medical isotopes that we are dealing with throughout our hospital network". But both of these are explicitly carved out, in section 5(3).

The inclusion of the Nuclear Waste Act in the Territory Coordinator Bill 2024 likely reflects a desire for administrative flexibility to manage projects or decisions that intersect with nuclear waste transport, storage, or disposal restrictions. It does remain possible that a future Commonwealth government may still look to NT for storing Commonwealth obligated nuclear wastes from Lucas Heights. It also remains possible that defence land in NT could be used for storing spent reactor fuel from nuclear submarines visiting Australian ports under the AUKUS agreement.

Neither of these possibilities are in any way a matter of ongoing public debate or consultation. Either would be significantly controversial. But it is highly unlikely that either would be the subject of private investment.

In the absence of any direct justification in the accompanying documents, it remains hard to see what connects the scheduling of this Act to the stated intention of increasing private investment in NT.

Recommendation: remove the Nuclear Waste Prohibition Act from the list of scheduled Acts

Recommendation: specify a list of Acts to which the Notices powers must never apply, including the Nuclear Waste Prohibition Act, to disallow their scheduling by regulation.

Other questionable inclusions to the schedule include:

Radiation Protection Act 2004

This law governs the use of radiation sources, emphasising public safety. While likely relevant for a narrow subset of projects, broader economic significance is unclear.

Territory Parks and Wildlife Conservation Act 1976

This Act focuses on conservation and management of wildlife and protected areas. Its inclusion could enable facilitation of projects impacting protected areas. But unless tied to projects like eco-tourism, this may highlight environmental concerns rather than encourage private investment.

Weeds Management Act 2001

Primarily addresses invasive weed control, which is critical for agriculture and land management. However, its link to private investment facilitation is not direct. This is one obvious example of an existing law which, if exempted for one project, could have unacceptable impact well beyond the project scope.

Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010

Focuses on safe transport of hazardous materials. Likely relevant to mining and industrial operations, but the facilitation of private investment through new powers over this Act is indirect. Could be more relevant for safety compliance rather than investment facilitation.

Recommendation: given the flaw obvious in relation to nuclear waste, audit the remaining 31 scheduled Acts to satisfy ourselves that there is an identifiable circumstance where granting powers to exempt and override that law will encourage private investment. Remove those that don't.

No-regrets amendments arising from consultation documents

One lens on amending the draft Bill comes from considering assurances given and limits presumed in the accompanying documentation. Certain general concerns with the Draft Bill may be mitigated somewhat by codifying features described in related papers but as yet unrealised in the Draft. This represents a set of no-regrets amendments that are by definition consistent with Government's stated expectations from this legislation, and can then represent a baseline for further improvement. If we are to accept the assurances given across those documents, amendments to enact those assurances should be welcomed. Of course if, on the other hand, those assurances are not to be backed by law, then this describes a significant failure of transparent consultation.

First, let's compare the leaked Consultation Paper to the Draft Bill, to identify where the assurances or framing provided in the Paper fall short of the powers and provisions included in the Bill. Although initially only quietly shared with select business stakeholders, the Paper was leaked, and the Opposition Leader tabled it in NT parliament, as tabled paper 91.

Chief Minister Finocchiaro, eschewing irony, both justified the approach of 'targeted consultation':

> "we put it out to key economic stakeholders for exposure consultation. That is what a transparent government does"

while inviting public engagement:

> "anyone can get their hands on it. If you want to provide feedback, go for your life"

The leaked Territory Coordinator Consultation Paper frames the Coordinator's powers as limited, transparent, and balanced, with strong safeguards for environmental protections and cultural values, and appropriate avenues for public consultation. However, the Draft Bill does not reflect these assurances, granting far broader and unchecked powers to the Minister and Territory Coordinator. Key discrepancies include the lack of limits on exemptions, step-in powers, and public engagement requirements.

Exemption Notices – Scope and Purpose

The leaked Consultation Paper indicates that Exemption powers will be "limited" and applied only where existing processes unnecessarily delay significant projects. The Paper frames exemptions as being narrowly targeted to resolve administrative bottlenecks, without compromising essential environmental, social, or cultural protections.

From section 6.3.1 of the Paper, we have:

> ..An exemption notice may only be used in certain circumstances, ...
>
> ...such as where compliance with statutory processes would be duplicative …

and:

> ...in circumstances where new technology is proposed that is not provided for or allowed under existing legislation

Section 67 of the Draft Bill provides the Minister with broad powers to issue exemption notices without requiring public justification of why an exemption is necessary. Whereas the Paper suggests that exemption powers will be minimal and specific, the Draft Bill imposes no explicit limits on the scope of exemptions (ie the types of laws that can be scheduled as subject to these powers); or indeed any safeguards around their issuance.
To exercise these powers, the Minister must be – as per 67. 3 –

> satisfied, on reasonable grounds, that a ground for giving the notice exists.

Grounds for giving an exemption are defined, in section 65, with an additional grounds that directly invites consideration of:

> the primary objective of driving economic prosperity

Section 64(3) explicitly states:

> An exemption notice cannot be given in relation to a statutory decision or statutory process that involves: (a) a requirement under the Environment Protection Act 2019 or any regulations made under that Act that relates to an assessment under a bilateral agreement with the Commonwealth; or (b) a matter prescribed by regulation.

This does not directly mention the Schedule, but it indirectly suggests that certain laws or provisions might be shielded from exemptions.

The Paper emphasises that environmental protections will not be compromised, suggesting that exemptions will not override critical environmental conditions or laws. But the Draft bill (Sections 64–67) makes no explicit exclusions for environmental laws, nor do they adequately guarantee that protections under NT's Environmental Protection Act 2019 or conditions related to Matters of National Environmental Significance (MNES) will be preserved.

Recommendation: Add clauses to confirm that exemption only applies to scheduled Acts

Recommendation: Add to section 63 explicit list of Acts and instruments which are not intended to ever be covered by exemption powers

Recommendation: Explicitly disallow exemptions that might affect requirements and conditions related to MNES

Recommendation: Require specific, objective criteria for issuing exemption notices to prevent arbitrary use.

Recommendation: Remove clause 17(1)(d), to ensure the definition of a significant project remains well defined

Ministerial Oversight vs Accountability

The leaked Paper offers that the (Chief) Minister's role will ensure *"clear oversight and accountability"*, with decisions subject to checks and public transparency. But the Draft Bill falls short. Whereas the Paper highlights the importance of oversight, the Draft Bill's most significant powers are granted to the Chief Minister with little transparency or accountability in decision-making. The Draft lacks procedural checks, review mechanisms, or transparency requirements that would balance the powers

Section 15 grants the Minister power to direct the Territory Coordinator without clear restrictions or transparency requirements. The exemption notice powers in Division 3, subdivision 2, grant unprecedented powers to the Chief Minister, without commensurate provision for oversight and accountability. Section 67 enables the Chief Minister to approve exemption notices without prior publication - only requiring notice to be tabled in Parliament after the fact.

Recommendation: Revise all accountability and transparency measures to apply as fully to the Chief Minister as to the Territory Coordinator.

Recommendation: Allow agencies to challenge directives that conflict with their statutory mandates or public interest responsibilities.

Limited Scope for "Step-in" Powers

The leaked Paper describes step-in powers as a last resort, to be applied when existing decision-makers fail to act efficiently, or to resolve critical delays. But the Draft bill provides (Sections 56–58) the Territory Coordinator broad discretion to assume control of decisions past or pending without requiring a demonstration of administrative failure, and make decisions without consultation or review. The Draft provides no clear limits or criteria for invoking step-in powers, contradicting the paper's framing of these powers as a limited, last-resort tool.

Recommendation: Require independent review or justification for invoking step-in powers (Sections 56–58), particularly in cases where statutory decision-makers are bypassed.

Public Consultation and Stakeholder Engagement

The leaked Paper states that transparency and stakeholder engagement will be integral to the Territory Coordinator's role, particularly for significant decisions like exemptions or condition variations. However there is no requirement in

the Draft Bill for public consultation before issuing Notices of exemption or conditions variation. These decisions are not subject to public comment or challenge.

Recommendation: Require consultation before issuing Notices of exemption, step-in decision making or conditions variation.

Recommendation: Publish draft decisions for public comment in advance, where feasible.

Territory Development Areas

According to the leaked Paper, TDAs will be designated strategically for projects of clear economic and social significance, with due consideration of environmental and cultural values. But section 28 of the Draft Bill allows the Minister to designate a Territory Development Area without requiring evidence of economic or social significance, and without conducting public consultation or independent assessment of impacts.

Recommendation: Mandate that TDA plans be approved by the Legislative Assembly, with evidence of criteria, noting any significant changes to land use or statutory obligations.

Impartiality of the Territory Coordinator

The Paper states the Coordinator will act with “independence and impartiality”, focusing solely on project facilitation and not political priorities. But the Draft Bill has no restrictions preventing political or external influence. Section 14 of the Draft Bill allows the Minister to direct the Territory Coordinator’s actions, including specific decisions.

Recommendation: Clarify and limit the Minister’s authority to direct the Territory Coordinator (as per Section 14), ensuring decisions are merit-based rather than politically motivated.

Protections for Cultural and Indigenous Values

The leaked Consultation Paper offers assurances that the Territory Coordinator’s role will respect and protect Indigenous cultural heritage and other social values, ensuring these are not compromised. But the Draft Bill has no provisions requiring the Coordinator to consider or consult Indigenous Traditional Owners, and no explicit requirement to protect cultural heritage sites or native title interests when exercising Notices powers.

Recommendation: Include explicit requirements for consultation with Traditional Owners and native title holders before issuing Notices (exemptions, step-in decisions, or varying conditions).

Recommendation: Explicitly exclude sacred sites and areas of cultural significance from projects eligible for exemptions or step-in decisions.

Recommendation: Explicitly align Coordinator Bill with Federal Indigenous rights laws by requiring decisions to comply with the Native Title Act 1993 and the Aboriginal Land Rights (Northern Territory) Act 1976.

Recommendation: Require consultation with Traditional Owners and Indigenous communities for any TDA plans or Notices affecting their land or heritage.

Recommendation: Mandate cultural heritage impact assessments for significant projects in TDAs to ensure Indigenous traditions are considered.

Now, comparing the Explanatory Guide with the Draft Bill, we identify further discrepancies where assurances provided in the guide fall short of the Draft's text. These examples highlight areas where the intended limits or scope described in the guide are not reflected in the actual legislative provisions. (*Note: ignoring some duplication in the unmet promises of the leaked Discussion Paper*)

The Draft Bill grants significant powers to the Minister and the Territory Coordinator, many of which lack the procedural safeguards and limitations implied in the Explanatory Guide. Key discrepancies include the scope of exemption notices, step-in powers, and land access provisions. These inconsistencies could result in broad discretionary powers being exercised without the transparency, accountability, or stakeholder consultation promised in the guide.

Exemption Notices and Compliance/Enforcement Activities

The Explanatory Guide states that "exemption notices are not intended to be used for compliance and enforcement activities". But Section 64 and Section 68 of the draft Bill provide broad powers for the Minister to issue exemption notices without explicitly excluding their use in compliance or enforcement contexts.

Recommendation: Restrict the application of Exemption Notices to disallow their application to compliance enforcement.

Public Consultation on Exemption Notices

The Explanatory Guide emphasises accountability and transparency, suggesting public consultation as an important safeguard for significant decisions. But the Draft Bill (Section 67) allows the Minister to issue exemption notices without any mandatory public consultation process or requirement to notify stakeholders beforehand. Only a tabling requirement exists after the fact under Section 69.

Step-in Powers for Statutory Decisions

The Explanatory Guide states that the "step-in powers" (where the Territory Coordinator assumes decision-making) will be used in limited circumstances, primarily to resolve blockages and ensure timely project progression. But those ‘limits’ and narrow scope aren’t evident in the Draft Bill. Section 56 and Section 57 allow the Territory Coordinator to step in and assume control over statutory decisions with broad discretion. There are no criteria or limitations explicitly restricting when and how this power can be exercised.

Recommendation: Define criteria for exercising the step-in powers

Powers to Vary Conditions of Approval

The Explanatory Guide presents the "condition variation notice" powers as a minor tool to address administrative issues. Instead we find in the Draft Bill that Section 70 and Section 72 allow the Territory Coordinator to vary or revoke existing conditions of approvals without consultation or a requirement to justify why such changes are necessary. The broad ability to revoke or vary conditions undermines existing environmental and planning safeguards, contrary to the guide’s presentation of this power as a minor adjustment mechanism.

Recommendation: Mandate the publication of detailed explanations for all Notices issued under the Bill, including condition variations.

Recommendation: Remove clause 71(1)(e), to ensure the criteria for condition variation remains well defined

Land Access and Entry Powers

The Explanatory Guide indicates that powers to access land are subject to appropriate safeguards, including fair compensation for any damage. The Draft Bill (Sections 30-32**)** give the Territory Coordinator powers to enter land without a requirement for prior notification or landholder consent, except in limited cases. Compensation is only available for “damage,” not broader disruption or access issues. The lack of safeguards like notification or consent falls short of the guide’s suggestion that land access powers would be tempered with appropriate procedural protections.

Recommendation: Extend compensation for execution of Powers of entry under section 31 to include damages related to disruption.

Recommendation: Empower an administrative tribunal or independent review body to hear appeals or complaints about decisions made under the Bill, including Powers of entry.

Designation of Territory Development Areas

The Explanatory Guide suggests TDAs will only be used for projects of clear economic significance, with stakeholder input. But the Draft Bill (in Section 28) provides broad powers for the Minister to designate any area as a TDA without requiring public consultation or an independent assessment of economic significance. Section 28, Designation of a TDA, allows for future regulation to invent new criteria.

Recommendation: Require consideration of stakeholder consultation before designating a TDA

Recommendation: Remove clause 28(2)(c), to ensure the criteria for designating TDAs remains well defined

Accountability Mechanisms and Reporting

The guide emphasises accountability, indicating that decisions made by the Territory Coordinator will be subject to reporting and transparency requirements. While Section 76 of the Draft Bill requires the preparation of reports, there is no requirement for detailed reporting on why exemption notices, step-in powers, or condition variations were used. The Bill lacks adequate meaningful reporting requirements that align with the assurances of accountability.

Recommendation: Allow agencies to challenge directives that conflict with their statutory mandates or public interest responsibilities.

Recommendation: Create a public, searchable database of all decisions made under the Bill to ensure transparency and accountability.

Recommendation: Create an independent body or ombudsman to oversee the Territory Coordinator’s use of powers and review contested decisions.

Recommendation: Allow third-party appeals or judicial reviews for exemption notices, condition variations, and step-in decisions.

Recommendation: Introduce sunset clauses requiring periodic review of the Bill’s powers to ensure they remain necessary and proportionate, and to monitor progress in amending existing legislation to remove unnecessary duplication.

Legislative Review Committee's Terms of Reference

The LSC ToR calls on the committee to inquire and report on:

(i) whether the Assembly should pass the bill;

Yes. But not without major amendments. Coordination of large projects is a welcome and sensible objective.

(ii) whether the Assembly should amend the bill;

Absolutely. The extreme regressive measures of exemption, step-in powers and condition review should be eliminated. These are at best a dangerously blunt instrument, at worst tangential to the objective of streamlining the administrative progress of development proposals.

However in the face of assertions by the interim Coordinator that public feedback will not sway the intended direction of the Draft Bill, various other amendments are proposed.

(iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

(A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

No. The coordinator powers are not sufficiently defined.

Despite section 4, terms like "economic significance" and "avoidance of duplication" remain vague and open to interpretation. This creates potential uncertainty for stakeholders about how rights or obligations might be impacted.

The extent of assessment power is broad, with limited constraints in the draft. Agencies may be obligated to act in ways that deprioritise other statutory duties.

The Coordinator can direct agencies or statutory officers to prioritise specific actions for significant projects. These directives might infringe on rights by overriding procedural safeguards or established statutory obligations.

Serious decisions, such as the issuance of exemption notices, are not subject to review but may be reconsidered by the Minister. Reliance on Ministerial oversight alone weakens accountability, as there is no independent review of potentially contentious or rights-infringing decisions. Although judicial review under administrative law principles is theoretically available, this is limited to assessing whether the decision-making process followed the law, not whether the decision itself was substantively reasonable.

(B) is consistent with principles of natural justice

No. There is no explicit requirement in the Bill for affected parties (e.g., community members, Indigenous groups, or stakeholders) to be notified or consulted before exemptions are granted. Decisions could therefore be made without giving stakeholders a chance to present their views or objections, violating the principle of procedural fairness.

The wide discretion granted to the Coordinator and Minister raises concerns about the potential for bias or subjective decision-making. There is limited transparency or review to ensure impartiality in granting exemptions.

(C) allows the delegation of administrative power only in appropriate cases and to appropriate persons

No. The definition of “significant project” is broad, leaving room for inappropriate application of these powers. The Draft Bill delegates administrative power broadly, with insufficient safeguards to ensure that powers are exercised only in appropriate cases and by appropriate persons. Delegation to the Territory Coordinator lacks safeguards ensuring that the Coordinator has the necessary expertise or neutrality. Delegation to the Minister relies heavily on political discretion without independent oversight. Delegation to agencies and officers undermines their autonomy, especially if directives conflict with their statutory responsibilities.

(D) does nor reverse the onus of proof in criminal proceedings without adequate justification

No.

(E) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer

No.

(F) provides appropriate protection against self-incrimination

The Draft Bill contains enforcement mechanisms, such as requiring information or cooperation from entities and individuals, that may raise concerns about self-incrimination. But it does not explicitly provide protections against self-incrimination. This could be addressed by explicitly referencing Part IIAA of the Criminal Code.

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively;

The Draft Bill does not explicitly impose obligations or penalties retrospectively. However, certain provisions particularly those involving TDAs and exemptions, could indirectly create retrospective impacts

The Draft Bill enables the declaration of Territory Development Areas, and imposes obligations or restrictions on activities within those areas. If TDAs are declared in areas where past actions were lawful, the bill could indirectly impose retrospective obligations, such as requiring compliance with new restrictions that were not in place when the actions occurred.

The Draft Bill grants powers to exempt certain processes or decisions from statutory requirements for significant projects. If exemptions are applied to processes already underway, affected parties might find their rights under the original process (e.g., consultation rights) have been retrospectively diminished.

(H) does not confer immunity from proceeding or prosecution without adequate justification

Immunity provisions must balance immunity with appropriate safeguards to ensure accountability for negligent or reckless actions. While Section 95 provides immunity for actions taken in good faith, it raises potential accountability concerns due to its broad scope and reliance on the ambiguous "good faith" standard. Strengthening safeguards and narrowing the provision could ensure a better balance between immunity and accountability.

The immunity covers a broad range of individuals associated with the Coordinator’s office, potentially shielding them from liability for significant impacts or errors. It extends to "purported" actions, which might include mistakes or overreach in exercising powers, raising concerns about accountability.

Affected individuals or entities have limited recourse if they suffer harm from actions covered by this immunity.

(I) provides for the compulsory acquisition of property only with fair compensation

The Bill outlines the framework for identifying land for acquisition but does not independently confer compulsory acquisition powers.

(J) has sufficient regard to Aboriginal and Torres Strait Islander tradition;

No. The Bill does not explicitly reference Aboriginal and Torres Strait Islander traditions, sacred sites, or cultural heritage in its decision-making framework. Broad exemption powers (Section 64) could potentially bypass laws protecting sacred sites or cultural practices. The absence of mandatory consultation provisions undermines the inclusion of Indigenous voices in decisions affecting their land and traditions.

(K) is unambiguous and drafted in a sufficiently clear and precise way.

No. Ambiguous terms remain undefined for the context of the Bill. Some recommendations made here (such as extending limitations on Coordinator powers to the execution of those powers by Chief Minister) appear to be addressing errors rather than design decisions. At least some of the wide variation between the associated documents and the Draft must be down to imprecision rather than deliberate omission.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons;

as discussed above: No.

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly

No.

Exemptions are broad and can dis-apply statutory requirements without parliamentary review. There is no requirement to table exemption notices in the Legislative Assembly, reducing transparency and accountability. These powers are not subject to parliamentary approval or direct oversight, allowing significant legislative modifications to occur without input from elected representatives.

TDA plans can impose obligations or modify land use, affecting stakeholders and communities. There is no provision requiring the Legislative Assembly to review or approve these plans.

Adding Acts to the Schedule via regulation expands the Bill’s scope and application. While regulations can be disallowed by the Legislative Assembly, this process is reactive and does not involve proactive scrutiny before implementation. The Legislative Assembly’s ability to oversee changes is limited to disallowance mechanisms, which may not provide sufficient control over significant amendments.

(C) authorises the amendment of an Act only be another Act.

This is a tricky question. The exemption notices and TDA-related provisions allow administrative powers to effectively modify how existing laws apply to specific projects or areas. While technically not amendments, these provisions can significantly alter the implementation or enforcement of existing legislation. The ability to exempt projects from statutory processes without parliamentary oversight could be seen as an indirect method of amending the application of laws. This raises concerns about the separation of powers and the potential erosion of legislative authority.

Recommendations beyond the Bill

One obvious way to manage the huge risk presented by the unprecedented Notices powers would be to explore other avenues to meet the stated goals of streamlining approvals to nurture investor confidence.

Section 65 of the Draft Bill proposes grounds for the extreme measure of issuing an exemption notice, including:

> (a) … substantially duplicates another statutory process ...

Recommendation: take a methodical approach to duplication; to scope the issue and identify appropriate management of duplication without resorting to the new exemption powers.

Section 6.3.1 of the leaked Paper describes an exemption notice being used

> … in circumstances where new technology is proposed that is not provided for or allowed under existing legislation.

Although this consideration is not reflected in the Draft, it offers some indication as to the intended initial direction of the sweeping new exemption powers. But this invites gamification, whereby claim to 'new technology' paradoxically loosens some of the scrutiny that proven management practices would encounter. To offset that risk, Government should seek to proactively regulate emerging technology, and encourage other approaches to addressing proposals involving emerging technology.

The example given of a CO2 pipeline is welcome. This is precisely the kind of industrial activity that must be subject to appropriately rigorous scrutiny, oversight and regulation. Any 'fast-track' approach to under-regulated activities offers a false economy – a local optimum of early traction while jeopardising long-term business integrity. A series of CSIRO reports on the so-called NTLEH (Low Emissions Hub) have developed over the past year, making a business case for sea dumping of carbon to address the pollution from a multi-tenant, multi-decade petrochemical precinct at Middle Arm. It is entirely unacceptable that a dubious new industrial practice, posited to be the basis for a 50 year development project, should rely upon these extreme new powers to paper over a lack of appropriate regulation.

Recommendation: seek to implement dedicated best-practice regulation of any emerging technologies that just might form the basis of our entire economy for decades to come