NORTHERN LAND COUNCIL

Submissions to the Legislative Scrutiny Committee

Territory Coordinator Bill 2025

19 February 2025

ABOUT THE NLC

The Northern Land Council (**NLC**) was established in 1973. Following the enactment of *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**), the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory (**NT**) to acquire and manage their traditional lands and seas. The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law, and sets out the functions and responsibilities of the land councils.

The NLC is also a Native Title Representative Body under the *Native Title Act 1993* (Cth) (**Native Title Act**), with main functions relating to progressing native title claims, consulting with native title holders, negotiating Indigenous Land Use Agreements (**ILUAs**), and resolving disputes about native title.

Approximately 30% of the NT population is Aboriginal. Over 50% of the NT's land mass is owned by Traditional Owners under the Land Rights Act (**Aboriginal Land**) (including around 85% of its coastline), with much of the remainder being subject to native title interests. Hence, Traditional Owners have an enormous stake in the economic development of the NT and should be at the forefront of any policy development.

A significant function of the NLC is to express the wishes and protect the interests of Aboriginal people who are Traditional Owners under the Land Rights Act or native title holders under the Native Title Act (collectively referred to as **Traditional Owners**) throughout its region. The NLC represents more than 36,000 Aboriginal people. Within its jurisdiction, the NLC assists Traditional Owners by providing services in its key output areas of land acquisition; Aboriginal Land Trust administration; native title services; minerals and petroleum; land, sea and water management; community development; advocacy; information and policy advice.

The NLC's vision is a NT in which the rights and responsibilities of Traditional Owners are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas, and intellectual property.

INTRODUCTION

The Legislative Scrutiny Committee (**Committee**) has been tasked to conduct an inquiry into the Territory Coordinator Bill 2025 (**Bill**).

Considering the Bill was only introduced last Wednesday 12 February 2025, The NLC is critical of the very short timeframe available for public submissions to the Committee. The Bill was introduced to Parliament on Wednesday 12 February 2025 with submissions to the Committee closing on 19 February 2024, only one week after the Bill's introduction. We note that previous inquiries by the Committee by the allowed three to eight weeks for public submissions.

The NLC is disappointed that the vast majority of issues raised in the NLC's previous submission were either unaddressed or exacerbated by the Bill's amendments. The bill in its current form is now less protective of Aboriginal Territorian's rights than the draft bill was.

As such, NLC does not support the Bill.

However, it appears the Bill's installation is inevitable; therefore, this submission seeks to provide constructive and achievable feedback to give the Bill any chance of being acceptable to the NLC's constituents. In particular, the Committee's third and fourth terms of reference will be addressed.

Due to the rushed nature of this inquiry, the NLC is unable to list all its concerns with the Bill. The NLC puts forward these high-level submissions to assist the Committee, which focuses on the Committee's third and fourth terms of reference.

COMMENTS ON THE BILL

These submissions refer to the NLC's earlier submission lodged on 17 January 2025 (**earlier submission**) in response to the Draft Territory Coordinator Bill 2024 (**Draft Bill**). To assist the committee, a copy of the NLC's earlier submission is annexed to this document.

1. Whether the Bill has sufficient regard to the rights and liberties of individuals

Lack of independence and consultation

1.1 Unchecked power concentrated in a few individuals is necessarily open to abuse. At the very least, it can lead to myopic decision-making that does not consider all who may be impacted.

1.2 Under this Bill, the Territory Coordinator (**TC**) is structurally incapable of considering the rights and liberties of individuals because:

a. The TC must comply with the Chief Minister's direction; [1]

b. Consultation for the use of 'exemption notices' are at the sole discretion of the TC. The TC can decide not to consult the public, as the wording of section 79 uses the phrase "may consult" and the TC can argue the primary principle applies.

[1] Section 21 of the Bill.

c. There are no consultation requirements for the designation of Infrastructure Coordination Areas (**ICAs**) and Territory Development Areas (**TDAs**). This is significant because the TC can use **all** the powers in Part 7 (including step-in, condition variation and exemption) so long as there is a TDA or ICA designation and regardless of whether there are associated plans.

d. There is zero consultation requirement for Program of Works despite it being similar to an Infrastructure Coordination Plan (**ICP**).

1.3 While the preparation of Territory Development Plans (**TDPs**) require the TC to conduct public consultation,[2] the Minister is only required to consider a "*summary of submissions"*, which potentially dilutes the whole exercise of consultation. By way of illustration, the Government's Territory Coordinator Bill Consultation Report[3] was self-serving and feedback was summarised in a selective and extremely high-level manner. None of the submissions have been publicly published by the government, which brings the integrity, transparency and legitimacy of this process into question. The NLC is concerned that this will be repeated in future summary of submission documents.

1.4 The TC must conduct public consultation for ICPs[4] however there is no requirement for the TC or Minister to "consider" them.

1.5 The removal of review rights in section 95 further removes individuals from the TC/Minister's decision making and gives the impression of absolute power.

1.6 The Bill should support the TC to make decisions with community input. We refer to repeat the NLC's earlier submission on consultation at Recommendation 7, 8, 10, 12 and 13.

Declarations of TDA and ICA

1.7 Most of the Northern Territory's land and seas are either Aboriginal Land or land affected by native title. Without mandatory consultation requirements, the Northern Territory Government (**Government**) is likely to prioritise expediency over processes that are *optional*. There is a risk to the land rights of Traditional Owners, which could lead to irreversible damage of their economic, social and spiritual wellbeing. We are particularly concerned that Aboriginal Land and Exclusive Native Title Land is able to be declared a TDA or ICA without any prior consent or even consultation. We reiterate that the power to designate TDA and ICAs is important because it allows the TC to exercise the full suite of powers in Part 7 of the Bill.

1.8 We refer to and repeat Recommendation 7 of NLC's earlier submission.

Power of entry

1.9 The 'power of entry' in the Bill is unchanged from the Draft Bill. We accordingly refer to and repeat Part 6 of the NLC's earlier submission regarding the interference with the land rights of Traditional Owners.

---

[2] Section 48
[3] Consultation Report: Draft Territory Coordinator Bill
https://cmc.nt.gov.au/__data/assets/pdf_file/0010/1481932/tc-consultation-report.pdf
[4] Section 29.

Primary Principle

1.10 We consider Section 8 of the Bill has the same effect the Draft Bill. We accordingly refer to and repeat Part 2 of the NLC's earlier submission.

Addition of Heritage Act 2011 (NT) to the Scheduled Acts

1.11 The Government has broken its own promise "*to uphold legislation that seeks to protect …. places of historical importance for the Northern Territory and places of historical importance*".[5]

1.12 While the Heritage Act may be a *perceived* barrier to economic activity, in practice, it does not impose a significant burden on proponents. The Heritage Act serves an important deterrence role and signals to proponents that cultural heritage is valued in the Northern Territory. There is little benefit to economic development by adding the Heritage Act to the Schedule. There is immeasurable social and cultural value in keeping it excluded.

1.13 For example, the Heritage Council previously prosecuted a pastoralist for damage to the heritage listed 'Wave Hill Walk-Off' site.[6] The combined effect of section 37 and 52 means the TC can prevent the Heritage Council from prosecuting damage to heritage sites if it is inconsistent with a TDP or ICP. This concern also applies to non-Aboriginal sites, such as World War II heritage sites in the Top End.

Removal of Section 14 of the Draft Bill

1.14 The removal of this section is a betrayal of the Government's commitment to "*to uphold legislation that seeks to protect Aboriginal rights, interests and cultural values*".[7] This protection was widely publicised in Government publications and information meetings.

1.15 It has been said that section 14 of the Draft Bill is not necessary, because the TC can only exercise its powers over Scheduled Acts, which means legislation such as the *Sacred Sites Act 1989 (NT)* cannot be impacted. However, this analysis is incorrect.

1.16 Firstly, legislation listed in the Schedule can be updated by Regulation. While the Sacred Sites Act is not listed in the Schedule (meaning the TV cannot exercise powers over it), the Government can simply create Regulations adding the Sacred Sites Act into the Schedule at a future date. This means, legislation like the Sacred Sites Act is still at risk of being interfered with by the TC. Protection of the Sacred Sites Act and the *Aboriginal Land Act 1978 (NT)* need to be enshrined in legislation through an equivalent clause to Section 14 of the Draft Bill.

1.17 Secondly, section 14 protects the *impact* of the TC's on Traditional Owner rights. For example, section 14(1)(b)(v) protected the "recognition and protection of native title rights and interests under a law of the Territory". The ways in which Traditional Owner rights can be diluted through modification of Acts in the Bill's Schedule is summarised in the NLC's earlier submission: see Part 3.5 to 3.11.

---

[5] Page 8 of Guide to the Territory Coordinator Bill: https://cmc.nt.gov.au/__data/assets/pdf_file/0014/1460300/explanatory-guide-to-the-territory-coordinator-bill.pdf

[6] https://www.abc.net.au/news/2024-01-31/alleged-wave-hill-walk-off-site-damage-nt-government-charges/103406676

[7] Page 8 of Guide to the Territory Coordinator Bill: https://cmc.nt.gov.au/__data/assets/pdf_file/0014/1460300/explanatory-guide-to-the-territory-coordinator-bill.pdf

Some examples include:

a. rights in common with other members of the public and landholders, such as consultation rights under the *Water Act 1991 (NT);* and

b. NT laws requiring compliance with the Native Title Act as a precondition to granting an interest, such as under *Petroleum Act 1984* (NT) and the *Mineral Titles Act 2010 (NT)*.[8]

1.18 The Water Act, Petroleum Act, and Mineral Titles Act, are all Scheduled Acts. This means the TC could exclude requirements under the Petroleum Act and Mining Act for mining companies to comply with the Native Title Act. Without the protective effect of section 14, the rights of Traditional Owners can be easily eroded.

Exemption notice

1.19 The NLC recognises that efficient regulation of large projects may require parts of existing legislation to be modified or excluded. However proper process should be followed so as to avoid alienating sections of the population, or unjustly curbing existing rights and liberties.

1.20 We refer to and repeat Part 9 of the NLC's earlier submission.

1.21 The Legislative Assembly's ostensible 'veto' will not serve as a legitimate check on the exemption power. Firstly, the Legislative Assembly only sits in approximately 10 weeks of the year and there could be weeks or months until an exemption notice is finally tabled. Secondly, section 82(5) allows government agencies and proponents proceed as though the exemption notice were valid, until a disallowable notice issued. This renders the parliamentary veto potentially ineffective, as the exemption notice could become redundant (due to statutory decisions being completed) by the time parliament is able to consider it.

Inability to review the decisions made under the Bill

1.22 In the Draft Bill, the bar on merits review only applied to the TC's use of the step-in power. Section 95 of the new Bill extends this bar to "*any decision under the Act"* regardless of whether the decision was made by the TC, Chief Minister, or other bureaucrat.

1.23 This removes the check on all decisions made under the Bill. Judicial review is expensive and inaccessible to most members of the public, and relies on a narrow set of technical legal arguments.

1.24 Therefore, the only 'check' on the TC's powers occurs through section 100 of the Bill, where the Chief Minister can direct the TC to review itself, or the TC can choose to review itself. Not only are the reviews conducted by the TC himself, the request for review is initiated from the TC or Chief Minister, with no avenue for a member of public to request a review. The process is circular and promotes bad governance.

1.25 We refer to and repeat Part 11 and Recommendation 14 of the NLC's earlier submission.

[8] *Petroleum Act 1984* (NT), s 57AAC; *Mineral Titles Act 2010* (NT), s 74.

2. Whether the Bill has sufficient regard to the institution of Parliament

2.1 The Bill undermines the institution of Parliament in the following ways:

a. **Primary Principle -** The wording section 8(2) is appears to allow the Chief Minister and TC to make decisions that are inconsistent with NT legislation. The NLC's earlier submission recommended that the phrase "*but, to the extent of any inconsistency with the considerations mentioned in subsection (1), those considerations prevail*" be removed.

b. **Section 37 and 52 –** these sections require government agency decisions to be consistent with TDP and ICPs, unless the TC consents. The provisions are worded broadly enough to allow the TC to hamper the most basic statutory functions of government agencies. For example, the NT Environment Protection Authority may wish to audit a proponent's activities, or prosecute an offender for an environmental offence, but cannot do so if the TC does not consent. This undermines the parliamentary intention behind an agency's governing legislation.

As the Government is likely to favour expediency for proponents at every turn, the Bill should limit the operation of sections 37 and 52 to address the risk described above.

c. **Step-in and condition variation power** – it is the parliamentary intention that specialised government agencies, such as the NT Environment Protection Authority make decisions, or make recommendations to the relevant Minister who then makes the decision. The Bill enables an unelected individual to make these decisions, despite the TC having no expertise or experience. Although the TC must consult government agencies prior to using the step-in or condition variation power, the TC can simply reject agency advice. We refer to and repeat Recommendation 11 and 13 on setting criteria on when the TC or Minister can refuse to follow an agency's advice and/or providing reasons for such refusal.

The condition variation power at section 86 continues to allow the TC to alter existing government agency approvals, regardless of whether those alterations could be validly made under the agency's governing legislation. This is effectively an 'exemption notice' power with less steps. We refer and repeat Part 10 of the NLC's earlier submission regarding the condition variation power.

d. **Exemption notice** – we refer to and repeat paragraph 9.4 to 9.6 and Recommendation 12 of NLC's earlier submission on how the exemption power breaches fundamental legislative principles in the NT (and the rest of Australia).

e. **Parliamentary veto** – we refer to and repeat paragraph 9.11 and 9.12 of the NLC's earlier submission on how the parliamentary veto is not a legitimate check on the TC's use of the exemption power, given the NT is a unicameral system that sits only 10 weeks of the year and further, how vetoes are unlikely to occur where the Government of the day controls the Legislative Assembly.

f. **Amending Scheduled Acts by Regulation -** As mentioned above, Scheduled Acts can be updated by Regulation with no involvement of Parliament. That means laws such as the Sacred Sites Act can be added to the TC's remit of powers in the future. Given the

Government back-sliding on its own promises to protect Traditional Owners interests, land councils and Traditional Owners cannot rely on commitments from the Government to not interfere with their existing rights. It is necessary for protections to be enshrined in legislation.

3. Conclusion

3.1 For the reasons outlined in this submission, we consider the Committee should not recommend that the Bill be passed by the Legislative Assembly in its current form.