

Our Ref: 18:D25:4514

Your Ref: COMM2024/00021-0001.8

Secretary
Legislative Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

Dear Secretary

RE: TERRITORY COORDINATOR BILL 2025

I refer to the Legislative Scrutiny Committee's call for submissions to its inquiry into the *Territory Coordinator Bill 2025* (the Bill). The Utilities Commission of the Northern Territory (the Commission) welcomes the opportunity to provide a submission on the Bill. Please note, however, the Commission has only had the opportunity for a cursory review of the Bill since its introduction on 12 February 2025 and has not sought legal advice on interpretation of the legislation.

The Commission is the Northern Territory's independent economic regulator for the electricity supply, water supply, sewerage services and ports industries, and is responsible for a number of statutory decisions and processes under the *Electricity Reform Act 2000* (ER Act), *Ports Management Act 2015* (PM Act) and *Water Supply and Sewerage Services Act 2000* (WSSS Act).

The Commission is established under the *Utilities Commission Act 2000* (UC Act) and the Commission's role includes licensing electricity generators, retailers and network providers, licensing water supply and sewerage service providers, making and approving industry codes, monitoring compliance with various legislation, codes and guidelines, public reporting on the performance of regulated industries, and price and access regulation. Under the UC Act, in performing its functions, the Commission is required to have regard to the need to facilitate entry into relevant markets, promote economic efficiency and facilitate maintenance of the financial viability of regulated industries, among other matters.

At a high level, it is unclear to the Commission the benefit that would result from the inclusion of the ER Act, WSSS Act and PM Act in the schedule to the Bill. The electricity supply industry constitutes the majority of the Commission's work program, and the Bill would seem most likely to impact the Commission's decision-making under the ER Act. The inclusion of the ER Act in the schedule to the Bill has the potential to slow down or add unnecessary complexity to the Commission's decision-making process, which could lead to delays in licensing decisions or important enabling regulatory reforms.

As an example, section 52(1) of the Bill indicates, in simplified terms, that the Commission must not approve an application for a statutory decision in relation to any activity being carried out on land in a Territory Development Area (TDA) unless the activity is consistent with the approved TDA Plan or the Territory Coordinator gives consent. This could lead to uncertainty if it is unclear whether a proposed decision is consistent with an approved TDA plan, and it may strain the Commission's limited resources to require the Commission to review TDA plans for potential inconsistencies whenever considering a statutory decision. Seeking the Territory Coordinator's consent for the

avoidance of doubt could also lead to unnecessary delays in decision-making. It is unclear how this requirement might apply in practice to, for example, an application to amend the System Control Technical Code, which provides for the reliability, safety and security of the power system.

Should the Territory Coordinator make a decision under a step-in notice (refer section 68 of the Bill) to grant an electricity supply licence, the Commission is concerned that it might be unable to materially alter a condition of that licence without consulting the Territory Coordinator or impose any inconsistent condition without gaining the Territory Coordinator's consent (refer section 76). Noting that electricity supply licences are usually granted indefinitely, and are therefore likely to be in place for many years, in the long-term this may create an additional burden and complexity for the Commission in making future decisions. For example, as part of the Commission's recent licensing review, the Commission reviewed and updated a number of licence conditions to ensure they remained current and fit for purpose. This involved removing licence conditions which were no longer relevant or necessary. Such a broad review may be more difficult to undertake where some licences are granted under a decision of the Territory Coordinator.

Should the Territory Coordinator make a decision to grant a licence (refer section 68 of the Bill), it is also not clear that the Commission is able to cancel or suspend the licence as circumstances change (refer section 75(3)). In some circumstances, the Commission may need to move quickly to cancel or suspend a licence to protect consumers or other industry participants, and this occurred in 2023 in relation to an electricity retailer that did not appear to have the financial resources to operate and was eventually subject to winding up orders.

The ability for the Territory Coordinator to give condition variation notices (refer section 84 of the Bill), and for the Minister to give an exemption notice (refer sections 77 and 80 of the Bill) appears to duplicate existing similar processes under the ER Act and WSSS Act, and this duplication may add unnecessary complexity and confusion for industry participants.

This submission focuses on issues that might be specific to the Commission and the inclusion of the ER Act in the schedule to the Bill. However, the Commission also has concerns about being unable to undertake its usual 30-business-day public consultation periods in a situation where it is required to make a decision within 20-business-days of a decision request (refer section 66 of the Bill).

To avoid possible complexity, uncertainty, delay and duplication in the regulatory framework, the Commission's preference, based on its interpretation of the Bill, is that the Bill is amended to exclude the ER Act, WSSS Act and PM Act in the schedule to the Bill. The Commission is supportive of regulations that are fit-for-purpose and considers exceptional or unique circumstances can be dealt with under existing legislation. For example, in 2024 the Commission granted, with the Minister's approval, new class exemptions from electricity supply licensing for virtual power plants and electric vehicle charging stations, among others.

The Commission thanks the Committee for the opportunity to provide a submission on the Bill.

Yours sincerely

A solid black rectangular box used to redact the signature of Lyndon Rowe.

Lyndon Rowe
Utilities Commissioner

19 February 2025