

To the Scrutiny Committee, my objection to the following are to be noted in your decision on whether the Territory Co-ordinator legislation should be passed.

My concerns are as follows:

- Water is free in the NT except the fracking industry which pays a nominal amount. This is not to be tolerated as the water in the territory serves other purposes and industries other than the gas industry. Why is the NT putting all their hopes and aspirations on this need for the mineral extraction and Gas extraction. This is a finite resource. What are the future plans when this has stopped producing?

Water is a basic requirement for all the living ecosystems in the Territory and as such must be preserved and conserved into the future for everything that relies on clean clear, potable uncontaminated water for survival. Water cannot provide for people if it is contaminated or non-existent.

Water is a finite resource and once contaminated it can no longer be available for other usage. <https://www.nhmrc.gov.au/about-us/publications/australian-drinking-water-guidelines> The *Australian Drinking Water Guidelines* (the Guidelines) provide guidance to water regulators and suppliers on monitoring and managing drinking water quality.

Although the Territory does not have to follow their guidelines, water is gold and must be treated with the respect it deserves as it is life giving to every human, animal, insect, bird, mammal, fish and anything else which relies on water for life.

From the BBC 23 August 2023.

**Fukushima disaster: What happened at the nuclear plant? (11 March 2011).**

**23 August 2023.** On Thursday, Japan will release treated radioactive wastewater from its Fukushima nuclear power plant - the site of a meltdown disaster 12 years ago.

The United Nations atomic energy regulator says the discharge of filtered water into the Pacific Ocean is safe and will have "negligible" impact on people and the environment. But the move has drawn fierce criticism from citizens of countries in the region. It is the latest development in the continuing saga of one of the world's worst-ever nuclear disasters. <https://www.bbc.com/news/world-asia-56252695>

What are the consequences of the cumulative release of contaminated waters into the ocean from disasters and the inability to decontaminate water before it is released. Is this another disaster waiting to happen from the release of contaminated water into our harbour? What are the consequences of all the water which has spilled from well heads and water storage tanks, which are supposed to be covered, without containment and where the containment barrier has failed?

- Oil and Gas. Over half (56%) of exported gas from Australia attracts zero royalty payments. The ATO (Australian Tax Office) has identified the gas industry as "systemic nonpayers of tax". i.e. Inpex, in 2023 paid no tax in 2020-21 despite more than \$58Billion income.

This is an untenable situation when the territory has been tasked with paying for so much infrastructure already for the Gas Industry. We have paid this from our taxes.

(The Territory Co-ordinator (an unelected Position) is a former employee of Inpex.)

- Water – Aqua nullius for indigenous people, water governance principles are not acknowledged.

This is very concerning considering that this Government intends to delete the Water Act 1992.

- The new bill would like to give the TC and The CM (Chief Minister) powers to “step-in” and exempt projects from complying from the law.

**My Response to Territory Consultation Paper Tabled by Ms Uibo 24-10-2024.**

**(Original Paper No.91)**

The Northern Territory Government was seeking stakeholder feedback in response to establishing the statutory role of Territory Co-ordinator.

My question concerns Stakeholders. All stakeholders were not consulted. This was not provided into the public domain for all people in the Territory to have their say as it concerns everyone in the Territory, everybody will be impacted, whether it be pollution from the fracking, e.g. Methane and by-products from the processing of, road users, e.g. impacted from increase of traffic, noise and dust.

Impacts from the uncertainty of whether their land will be acquired for the corridor for water pipelines, gas pipelines, aquifers running dry, inability to access country for recreation.

Loss of their family farm because of Government acquiring of land for “Economic Benefit”.

Our beautiful harbour becoming a sacrifice zone to all the industrialization and the associated pollution of our water which will impact recreational fishing, the mangroves, the fish nurseries, the mud being redeposited over living corals, (from dredging), the eyesore on the horizon, fish and dolphins, dugongs and their feeding grounds. Shore birds, both migratory species and non-migratory species.

They all will be impacted.

Humans will be impacted in unexpected ways which will not benefit their health. We live within three kilometers of Elizabeth River and the Gas hub with associated works. There will be implications on health in living humans, particularly little people, they are predominantly vulnerable as babies and in-utero. There is enough information from our Doctors in the NT, who recently visited Canberra and informed Canberra of the very serious health risks to unborn humans and adults.

Living within a 3-kilometer radius of a particular large and volatile Gas processing plant is not ideal. It is far too close for human habitation to be a safe distance from Air Pollution i.e. particulate matter both 10.5 microns and 12.5 microns. Possible Explosions from processing Gas to create by-products like urea etc.

The Mississippi Cancer Alley study proves that people within a 5-kilometer, ten kilometer and even a 20-kilometer radius of their similar Gas processing plants had a much higher risk of cancers as a result of exposure to toxics.

Therefore, I am definitely a stakeholder in this Consultation Process which you have started for your Territory Controller, and as such I disagree with your idea of employing an unelected person in the role of Territory Coordinator to declare projects to be of “economic significance”.

- Step-In Powers.

I disagree with the assumption that the TC and/or CM have the expertise and nor the ability to make decision on the behalf of our Government Departments who have a large amount of specialised expertise in these specific areas and the historical awareness. The TC should not be able to override these experts because of the Governments need to go ahead with projects which need to be scrutinised to know they are safe for the Territory and the people who inhabit these areas. Also, as stated previously, we have wildlife which are unique to the territory which needs protecting, Australia is a signatory to Conventions for Migratory Birds. Will these be overlooked as well.

### **Wetlands and the Ramsar Convention.**

Wetlands are areas of land where water covers the soil – permanently or just at certain times.

They include rivers, swamps, marshes, billabongs, lakes, lagoons, oases, saltmarshes, mudflats, mangroves, coral reefs, bogs, fens, and peatlands. Wetlands can be natural or artificial and the water within a wetland may be static or flowing, fresh, brackish or saline. There are even underground wetlands.

“What is Australia’s involvement in the Convention? Australia was one of the first countries to sign the Ramsar Convention, and in 1974 designated the world’s first Ramsar site: Cobourg Peninsula in the Northern Territory. The Environment Protection and Biodiversity Conservation Act 1999 provides a framework for protecting their ecological character and managing our Ramsar sites in accordance with the Convention. Key actions to implement the convention in Australia include: • developing national guidance on implementing the Convention in Australia • providing funds to support the conservation and wise use of our Ramsar sites • developing Ecological Character Descriptions for all Australian Ramsar sites • participating in the Partnership for the Conservation of Migratory Waterbirds in the East Asian – Australasian Flyway • participation in international treaties for the protection of migratory birds:

JapanAustralia Migratory Bird Agreement, ChinaAustralia Migratory Bird Agreement and the Republic of Korea-Australia Migratory Bird Agreement • regularly reviewing Ramsar site condition • working with state and territory governments to promote the conservation Ramsar sites and wise use of all wetlands, and • coordinating and facilitating collaboration between the Convention’s Oceania member countries.

Australia’s Ramsar sites cover around 8.1 million hectares, forming an impressive estate of diverse wetland types; freshwater and marine; permanent and ephemeral; in every climatic zone. Our Ramsar estate includes: • coral reefs like Ashmore Reef National Nature Reserve • seagrass shoals, mangroves and tidal flats such as Queensland’s Moreton Bay • inland lakes, billabongs and floodplains like Victoria’s Barmah Forest • artificial lakes such as Western Australia’s Lakes Argyle and Kununurra • monsoonal rivers and tropical floodplains of Kakadu National Park in the Northern Territory • coastal lagoons such as Tasmania’s Jocks Lagoon • alpine cirques like Blue Lake in Kosciusko National Park, New South Wales • arid, ephemeral lakes such as South Australia’s Coongie Lakes, and • sub-alpine sphagnum bogs like the Australian Capital Territory’s Ginini Flats Wetland Complex.”

<https://www.dcceew.gov.au/sites/default/files/documents/wetlands-ramsar-convention.pdf>

## Exemption Powers

● These powers allow the Territory Coordinator or Chief Minister to exempt works and projects from any statutory requirements in the 32 Acts identified in the Territory Coordinator Act, if they deem the relevant statutory requirements are not needed for effective regulation, and the works or project will be of “economic significance” to the Territory, or a region of the Territory.

These are incredibly broad and vague powers that will allow the Chief Minister or Territory Coordinator, with little to no accountability, to circumvent any statutory requirements from the list of 32 Acts. Although exemption notices are required to be passed by the Legislative Assembly, because the CLP has a huge majority in Parliament, this is highly unlikely to prevent any exemption notices from passing.

My concern is also that The NT Government will unwittingly not conform to The Kyoto Protocol which Australia Entered into force for Australia: 11 March 2008. Particularly Article 2 concerning the emissions reductions and targets and methane reduction etc.

## Australian Treaty Series

### **KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE**

#### **Article 2**

“1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy.

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation.

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations.

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies.

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments.

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol.

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector.

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy.

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2 (e) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1 (a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.”

<https://www.austlii.edu.au/au/other/dfat/treaties/ATS/2008/2.html>

#### Powers to access land

- The Territory Coordinator can authorise people to enter private land, without a warrant or permission, to conduct any works they deem reasonably necessary to “develop a Territory Development Area plan”, including bringing vehicles, machinery onto that land and installing any equipment they deem necessary.

- Landholders have no right to challenge this authorisation, and if damage is done to their property, the Territory Coordinator decides how much compensation they are entitled to.

My understanding is that Landowners have the right to fair compensation By Australian Common Law.

“5. Blackstone's language of natural right does not have the same force today, but the role of the common law as a repository of rights and freedoms is of considerable significance. A recent, nonexhaustive list of common law rights in Australia contains the following

6: the right of access to the courts; immunity from deprivation of property without compensation; legal professional privilege; privilege against self-incrimination; immunity from

the extension of the scope of a penal statute by a court; freedom from extension of governmental immunity by a court; immunity from interference with vested property rights; immunity from interference with equality of religion; and. the right to access legal counsel when accused of a serious crime.

To that list one would add: no deprivation of liberty, except by law; the right to procedural fairness when affected by the exercise of public power; and. freedom of speech and of movement.”

<https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj4sep09.pdf>

Anglo Australasian Lawyers Society

The Common Law and the Protection of Human Rights

Chief Justice RS French 4 September 2009, Sydney

### **The 32 laws that can be bypassed**

The list of the 32 laws that can be bypassed is listed on the last page of the legislation.

There should be an explanation for each of these laws to explain why it is necessary for the Territory Coordinator to be able to “step in” or “exempt” projects from these laws.

For example, why is it necessary for the Territory Coordinator to be able to bypass the Building Act, Planning Act, Water Act, Radiation Protection Act, Petroleum Act, Lands Acquisition Act, Heritage Act etc.

Incorporating these Acts without a clear rationale for doing so opens the door to all manner of future misuses.

#### Condition Variations

- This allows conditions placed on projects to be changed or removed by the Territory Coordinator, regardless of whether this would be lawful or not under the original legislation (e.g. the Water Act).
- For example, conditions could be placed on a fracking project to manage wastewater or limit how close a fracking operation can be built to nearby creeks. These could then subsequently be changed or removed by the Territory Coordinator.
- There is no explanation for why this power is needed in the legislation. There needs to be far more limitations around what kinds of conditions, in what circumstances and with what reasons, the Territory Community concerns have been categorically ignored
- Despite hundreds of community members raising many of the concerns listed above in the initial consultations on the Territory Coordinator - whether via a submission or an in-person consultation - these concerns seem to have been completely ignored in the revised legislation.
- The CLP Government promised to govern with transparency and accountability, with many maiden speeches prefacing MLAs desires to listen to and fight for their constituents. The Territory Coordinator seems to fly in the face of those commitments.

This clause provides a definition for ‘economic significance’, which is a key criterion for making decisions to designate significant projects and TDAs. ‘Economic significance’ is defined broadly to ensure there is flexibility around the type, scale, and impact of development that satisfies the criteria for these designations. This may include private sector investment, job creation, population growth, or the development or advancement of an industry in the Territory or a region of the Territory.

Whether the region is small or large or on a local level to a few people who can benefit from this development. There is no requirement to employ local people and a percentage of Territorians who will benefit from local employment. There is nothing to suggest that the Territory will enjoy economic significance. What does this even mean?

#### Clause 7. Meaning of statutory decision

This clause provides a definition for ‘statutory decision’, which is limited to decisions that are made under a law that is included in the Schedule or listed by Regulation. This limitation is intended to ensure the powers in the Bill can only apply to decisions that relate to the regulatory processes that enable economic development and avoid unintended consequences from their application to decisions under other legislation.

I would like to be informed of an example of this, as I am concerned that the 32 Laws which can be by-passed thereby creating an environment which is literally a free-for-all.

#### Clause 8. Primary principle of Act

This clause sets out the primary principle that the Territory Coordinator and Minister must consider when exercising key powers under the Bill, or a power or function under any other Act in connection with the execution of a key power. When doing so, this clause provides the Territory Coordinator and Minister must consider the primary objective of driving economic development, as well as the potential social and environmental outcomes. Driving economic development is the primary objective of the Territory Coordinator’s role. However, must be balanced and proportionate when considering the potential social and environmental outcomes, such as benefits to the community impacts to human health for example.

When the Territory Coordinator or Minister exercises a power under another Act under a step-in notice, they must consider the primary principle in addition to the objects, principles or considerations of the relevant Act. However, this clause provides that to the extent there is any inconsistency between the primary principle and the objects, principles or considerations of the relevant Act, the primary principle prevails. This is to ensure the Territory Coordinator and Minister make decisions in a way that gives effect to the purpose of the other legislation but are also empowered to achieve the objectives of the Bill. This broadens the basis for decision-making and means that the Territory Coordinator or the Minister have the potential to make decisions that were not available to the original decision-maker.

This also makes the power of the TC and CM absolute and gives them power to override key legislation from the 32 Laws which are to be scrapped.

#### Clause 17. Territory Coordinator’s staff, consultants and facilities

This clause provides that the Territory Coordinator’s staff consists of public sector employees who are employed for the purposes of carrying out the coordinator’s functions, or persons employed in an Agency who are made available to the Coordinator through an arrangement

between their Chief Executive Officer and the Coordinator. Upon establishment, the Territory Coordinator will be administratively supported by the Department of the Chief Minister and Cabinet and will be provided with the facilities to properly exercise their functions and powers. This clause also enables the Territory Coordinator to engage consultants. This will be an important mechanism for the Territory Coordinator to access specialist skills and expertise.

We already have specialist skills and experience from all the other ministers across different departments such as Environment and Water etc. We don't need consultants who do not have the territory experience.

#### **Clause 26. Territory Coordinator's views to be sought on ICA applications**

This clause requires a responsible entity, when considering an application that relates to an area within an ICA to which an ICP is not in effect, to take into account the Territory Coordinator's views on the application before making any decision. This ensures that the Territory Coordinator maintains visibility of activities in the ICA and can communicate to decision-makers the potential impact that an application could have to the delivery of infrastructure within the ICA.

IC activity: This term means any activity undertaken by the Territory Coordinator to facilitate the implementation of an ICP, or a project that is permitted under an ICP  
ICA: This term means an area of land or water declared as an infrastructure coordination area under section 25(1).  
ICP: This term is explained in section 27. (ICP) Infrastructure coordination plan.

An ICP can be used to coordinate infrastructure that is delivered or partly delivered by private entities. For example, an ICP could consider the electricity infrastructure upgrades necessary for a solar energy project, and require a public entity to deliver some components, like a substation, while the proponent would be responsible to construct the power lines and other transmission infrastructure.

The power to direct a public entity allows the Territory Coordinator to seek information and other assistance that is required to develop the ICP.

This is problematic in that if the work was **put out to Tender**, then there would be a fair and equitable method for Industry to quote on the works. The best value for money and capability would be chosen to conduct the work, with a preference for companies in the Territory to be selected firstly on ability, and on cost and on whether they could perform the work with their workforce and to maintain follow up maintenance for a period of how many years. The first preference should always be Northern Territory companies.

I see problems with the TC having the authority to talk to companies without the process of Tendering.

#### **Clause 41. Submission to Minister and decision**

This clause requires the Territory Coordinator to give the proposed program of works to the Minister for approval. The Minister can approve the proposed program of works, refer it back to the Territory Coordinator for amendment, or refuse to approve it. Approving a program of works under this clause is a 'key power' under the Act. This means that when exercising this power, the Minister must have regard to the primary objective of driving economic development for the Territory or region of the Territory, and the potential social and environmental outcomes for the Territory or a region of the Territory (refer to clause 8).



The primary objective should be for the territory and keeping it healthy and safe environment for the electorate first and foremost. To keep people safe from pollutants and good quality of air.

**Clause 44. Powers of Territory Coordinator in relation to Territory development area**

This clause enables the Territory Coordinator to direct and coordinate the work that is required to develop a TDA plan by directing a public entity to undertake or coordinate investigations or studies, or prepare reports, or by engaging a person to undertake investigations or studies or prepare reports. The Territory Coordinator can also authorise a person to enter land to carry out work to prepare a TDA plan. TDA plan investigations could include baseline flora and fauna surveys, geological testing, infrastructure assessments, economic demand assessments, feasibility studies or cultural heritage assessments. This information will inform the TDA plan and its proposed land uses, development activities and associated infrastructure. TDA plan investigations could also identify a justification to expand or decrease the boundaries of the TDA.

The territory already has departments with expertise to do these studies from a vast knowledge base and experienced field staff.

**Clause 48. Public consultation** This clause requires the Territory Coordinator to conduct public consultation on a proposed TDA plan and to make the proposed plan available online. Regulations will provide further detail about how public consultation will be conducted.

Will this consultation include the information on the amount of people who have been consulted, what was their main priority, what other concerns they had. What will be done to address their concerns and what type of remediation was made and whether it was successful?

**Clause 27. Infrastructure coordination plan** This clause provides that an ICP in relation to a significant project does the following: a) identifies the infrastructure required to support the project; b) identifies the entities that are responsible for delivering the infrastructure works; c) Identifies any governance or finance frameworks required for delivering the plan.

Again, this precludes a Request for Tender.

**Part 8. Entry of land without warrant** This Part gives the Territory Coordinator the power to authorise persons to enter land within a TDA or ICA with 14 days' notice to the owner or occupier, for the purpose of undertaking work necessary to inform a TDA plan or an ICP. The Part also provides for compensation in certain circumstances.

I would like to see an authority specific to this area from suitably qualified people and authorised people to make this determination.

**Clause 93. Powers on entry**

This clause specifies that the following actions can be taken by a person who is authorised by the Territory Coordinator to enter land for the purposes of developing an ICP or proposed TDA plan: a) inspect the land and anything on the land; b) bring vehicles, equipment, machinery and materials onto the land and install and maintain any equipment, machinery or materials; c) take photographs and make sketches or other records of the land; d) measure anything, or take samples of anything, on the land; e) take any other action reasonably required for the development of the plan. 28 This clause requires the person who is authorised to enter land to make sure that any work carried out on the land has minimal impact. Once the work is

complete, the person must remove everything they brought onto the land, and to the extent possible, leave the land in the same condition as when they entered.

This can lead to problems in the area of weed control, from vehicles and ability of the land holder to enjoy their land in a peaceful manner without undue interference. As well as the safety of their animals and visitors.

**Schedule Acts that are Scheduled laws section 3,**

definition Scheduled law, paragraph (a)

- 1 Building Act 1993
- 2 Control of Roads Act 1953
- 3 Crown Lands Act 1992
- 4 Darwin Waterfront Corporation Act 2006
- 5 Electricity Reform Act 2000
- 6 Energy Pipelines Act 1981
- 7 Environment Protection Act 2019
- 8 Fisheries Act 1988
- 9 Geothermal Energy Act 2009
- 10 Heritage Act 2011
- 11 Land Development Corporation Act 2003
- 12 Land Title Act 2000 13 Lands Acquisition Act 1978
- 13 Lands Acquisition Act 1978
- 14 Local Government Act 2019
- 15 Mineral Titles Act 2010
- 16 National Gas (Northern Territory) Act 2008
- 17 Pastoral Land Act 1992
- 18 Petroleum Act 1984
- 19 Petroleum (Submerged Lands) Act 1981
- 20 Planning Act 1999
- 21 Port of Darwin Act 2015
- 22 Ports Management Act 2015
- 23 Radiation Protection Act 2004
- 24 Radioactive Ores and Concentrates (Packaging and Transport) Act 1980
- 25 Special Purposes Leases Act 1953

26 Territory Parks and Wildlife Conservation Act 1976

27 Traffic Act 1987

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

29 Waste Management and Pollution Control Act 1998

30 Water Act 1992

31 Water Supply and Sewerage Services Act 2000

32 Weeds Management Act 2001

I would like to see the reasons for these Laws/Acts to be deleted and whether they are for the betterment of the people of the Territory.

### **LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

15th Assembly Legislative Scrutiny Committee Terms of Reference

Sessional Order 14

Establishment of Legislative Scrutiny Committee

(1) The Assembly appoints a Legislative Scrutiny Committee

(2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.

I would like to see the appointment of three Opposition members and three Crossbench members as well, to give this some semblance of fairness, otherwise every decision could, potentially, be carried by the Government members.

Thank you for the opportunity to respond to your Legislation.

Bodil Conroy

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