CENTRAL LAND COUNCIL

Submission to the Legislation Scrutiny Committee

Inquiry into the Territory Coordinator Bill 2025

19 February 2025

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ACKNOWLEDGEMENT

The Central Land Council acknowledges the Territory's traditional owners, who were the first inhabitants in the Territory and remain the first and most important stewards of the Territory's resources.

EXECUTIVE SUMMARY

1. The Central Land Council (**CLC**) provides this submission to the Legislation Scrutiny Committee (**Scrutiny Committee**)'s Inquiry into the *Territory Coordinator Bill 2025 (*the **Bill**).

2. This submission provides responses to the specific questions the Scrutiny Committee will report to the Legislative Assembly and is to be read in conjunction with CLC's submission on the *Territory Coordinator Bill 2024* (**2024 Draft Bill Draft Bill**) attached at **Appendix A** (**CLC Submission on the 2024 Draft Bill**).

3. In response to the specific questions asked by the Scrutiny Committee, CLC answers as follows.

   (a) Whether the Assembly should pass the Bill – ***No***

   (b) Whether the Assembly should amend the Bill – ***Yes***

   (c) Whether the Bill has sufficient regard to the rights and liberties of individuals – ***No***

   (d) Whether the Bill has sufficient regard to the institution of Parliament – ***No***

4. Reasons for those answers are set out in these submissions.

CLC'S RESPONSES TO SCRUTINY COMMITTEE QUESTIONS

(a) Whether the Assembly should pass the Bill

1. The Assembly should not pass the Bill.

2. CLC, in its own right and on behalf of its constituents, does not support the Bill due to the unacceptable risks it presents to the rights and interests of Aboriginal Territorians. The Bill, if enacted in its current form, will result in adverse social, environmental and cultural outcomes. It will erode transparency and accountability in the Northern Territory.

3. The Bill also fails to address any of the concerns raised by CLC in its submission on the 2024 Draft Bill.

4. The deficiencies identified in the following sections demonstrate some of the reasons why the Bill should not be passed in its current form.

(b) Whether the Assembly should amend the Bill

5. The Bill would need to be extensively amended for it to be acceptable to CLC and its constituents. Given:

   a) the rushed nature of this enquiry (with only one week to review the Bill, which was substantially amended from the 2024 Draft Bill); and

   b) the manner in which concerns raised in the CLC Submission on the 2024 Draft Bill were summarised and disregarded in the consultation report,

   the CLC is not confident that any amendments it proposes will be seriously considered.

6. Nevertheless, with the extremely short timeframe to consider the Bill, CLC submits that the following high-level amendments would substantially improve the outcomes for Aboriginal Territorians if they are incorporated into the Bill:

   a) The Minister must not designate any Aboriginal land, areas with exclusive native title, parks, reserves or environmentally protected areas as Territory Development Areas (**TDAs**) or Infrastructure Coordination Areas (**ICAs**) (or if allowed, only with the free, prior and informed consent of the Aboriginal Land Trusts and native title holders).

   b) The Territory Coordinator's power to grant entry onto Aboriginal Land or exclusive native title areas, under section 92 of the Bill, must be removed.

   c) The limitations on the exercise of the Territory Coordinator's power to protect Aboriginal rights, interests and cultural values (previously under section 14 of 2024 Draft Bill) must be re-inserted to meet the original intent that

      > *"These limitations are included to uphold legislation that seeks to protect Aboriginal rights, interests and cultural values and places of historical importance to the Northern Territory; and, to uphold intergovernmental agreements with the Commonwealth Government*.[1]

      The old section 14 must also be amended in accordance with the CLC Submission on the 2024 Draft Bill.

   d) Similarly, the Minister must not be able to give an exemption notice in relation to a requirement under the *Environment Protection Act 2019* or regulations that relates to an assessment pursuant to a bilateral agreement with the Commonwealth. That limitation was contained in section 64(3) of the 2024 Draft Bill but removed from section 77 of the Bill.

   e) The primary principle must give equal weight to economic, social, cultural and environmental outcomes and must not override other legislation.

[1] Original consultation paper on the TC Bill 2024, October 2024

f) The Territory Coordinator's and the Minister's decisions, when exercising the step-in power and vary condition power, must be subject to review under the relevant law, and Parliament should also refuse to pass the *Petroleum, Planning and Water Legislation Amendment Bill* introduced on 12 February 2025 to preserve existing review rights which improve the quality of administrative decision making.

g) The breadth of powers given to two individuals, one of which is an unelected official, are too board and must be precisely defined. Such precision provides clarity and transparency for Territorians about the scope of their powers, but also protection for them so that they know precisely what they are and are not authorised to do.

h) Consultation should be required for any decision that affects other parties. Ideally, consultation would be public, but at minimum must canvass the interested parties (as defined in section 5 of the Bill). The Territory Coordinator or Minister, whoever is making the decision, must take into account the actual submissions received, not a summary of them.

i) The Territory Coordinator and Minister must not have the power to identify or determine cultural values and outcomes for a TDA through the recommendation or approval of a TDA plan (sections 3 and 46(1)). That is and must remain a matter for traditional owners and native title holders. Further, section 46(1) of the Bill must be amended so that assessment of environmental, social and cultural outcomes and values of a TDA must be completed with reference to a specific proposal.

j) Drawing upon the CLC Submissions to the 2024 Draft Bill, the following additional amendments should be made:

    i. The provisions relating to step-in notices and condition variation notices, set out in Divisions 3 and 5 of Part 7 of the Bill, should be amended to:

        A. Require consultation with interested parties and others whose interests may be affected by the decision, and require serious consideration of their views.

        B. Require consideration of advice from the responsible entity, and provide public, contemporaneous reasons if that advice is not followed.

        C. Include criteria on which the Territory Coordinator or Minister can refuse to follow the responsible entity's advice.

        D. Require the Territory Coordinator or Minister to follow the same statutory processes and consider the same relevant considerations as the responsible entity would have done under its governing legislation.

    ii. The CLC strongly recommends that the exemption notice power be removed from the Bill. Notwithstanding the objection to that power in its entirety, if it is pursued, then:

A. Section 14 of the 2024 Draft Bill must be re-inserted and amended to include the Minister.

B. The Territory Coordinator must be required to consult with and consider the views of interested parties, those affected by a proposed exemption notice and the public generally prior to it being issued.

C. Both the Territory Coordinator and the Minister must be required to seek and consider the advice of the responsible entity, and provide public, contemporaneous reasons if that advice is not followed. Include criteria on which the Territory Coordinator or Minister can refuse to follow the responsible entity's advice.

D. Grounds on which an exemption notice may be recommended by the Territory Coordinator and issued by the Minister should be made specific, objective and not left to subjective interpretation of the primary principle.

E. Any notice ought to be made public immediately and no work should commence in respect of a notice until the matter has been brought before parliament.

iii. There must be clear, specific and measurable benchmarks on what constitutes a "significant project" (section 3) and "economic significance" (section 4).

iv. The Minister must consult with the public and interested parties before designating an area of land or waters as a TDA or ICA. This is in addition to the restriction described above about declaration of TDAs and ICAs on Aboriginal land, exclusive native title, parks, reserves and environmentally protected areas.

v. Regulations should be drafted and made available for public consultation before the Bill is further considered by parliament.

vi. These amendments are a summary only and the CLC relies on its Submission to the 2024 Draft Bill in its entirety.

(c) Whether the Bill has sufficient regard to the rights and liberties of individuals

7. The Bill does not have sufficient regard to the rights and liberties of Aboriginal Territorians. On the contrary, the Bill threatens to dilute and undermine the rights and interests of Aboriginal Territorians.

EXAMPLE 1: The risks of removing s14 of the 2024 Bill for Aboriginal Territorians

By removing section 14 of the 2024 Draft Bill, there is no longer any attempt to uphold legislation that seeks to protect Aboriginal rights, interests and cultural values and places of historical importance for the Northern Territory. This is:

a) contrary to statements made during the initial consultation period,[2] and

b) exacerbated by inclusion of the *Heritage Act* as a Scheduled Act, something that was not raised as a possibility during the initial consultation period.

EXAMPLE 2: Disregards procedural rights for Traditional Owners, native title holders and all Territorians

a) Under the Bill there is no obligation to consult with nor seriously consider the views of interested parties or other people whose rights and interests may be affected by:

   i. Step-in notices (even where those parties would have had consultation rights under the legislation governing the responsible entity)

   ii. Exemption notices

   iii. Variation of a condition on an existing approval or decision.

b) An example is where a decision might require a proponent to undertake a social and cultural impact assessment in a particular manner. Variation to that condition would impact the people whose society and culture was to be the subject of that assessment. They ought to be given opportunity to comment on and have input into any proposed variation, and have their views seriously considered.

EXAMPLE 3: Undermines Traditional Owners rights to follow cultural protocols and carry-out personal responsibilities for cultural values

a) A TDA plan is proposed by the Territory Coordinator and may be approved by the Minister for a specific TDA. Amongst other things, a '*TDA plan may identify the activities, land uses, development outcomes and environmental and social values or outcomes for the area; and the infrastructure and services required for the activities, land uses and development proposed for that area' (*section 46(1)).

[2] See for example the October 2024 consultation paper, quoted in paragraph 6(c) above

b) ‘Environment’ is defined in section 3 as including all aspects of the surroundings of humans, including cultural and social aspects. This section gives the Territory Coordinator the power to identify the cultural values and outcomes for a TDA. This undermines the cultural authority, rights and personal responsibility of traditional owners and native title holders to identify, manage and protect their own cultural values.

c) Further, a TDA plan is only publicly consulted on if the regulations require it – and there are no draft regulations yet. The Minister makes the decision about whether to approve a TDA plan, but is only required to consider a “summary” of public submissions, if there is consultation about the plan. The “summary” of the submissions about the 2024 Draft Bill published by the Northern Territory shows how details from public submissions are lost. That document reads as though there is a lot of support for the Territory Coordinator but all CLC’s concerns were glossed over.

d) This demonstrates the very real risk that Traditional Owner concerns relating to the protection of their rights and interests can be easily disregarded by the TC in decision-making.

EXAMPLE 4: Undermines Aboriginal and non-Aboriginal peoples’ liberty to seek declaration and protection for important heritage places

a) Section 52 states that *‘a responsible entity must not approve an application for a statutory decision or regarding a statutory process in relation to any activity being carried out on land in a Territory development area unless the activity is consistent with the approved TDA plan … or the Territory Coordinator gives consent*’.

b) Traditional Owners or native title holders or indeed any Territorian may wish to nominate a place as a heritage place. That nomination is made to the Heritage Council under the *Heritage Act*, which is now a Scheduled Act.

c) The Heritage Council’s decision is a statutory decision for the purpose of the Bill. That means that if declaring the place as a heritage place would not be consistent with the approved TDA plan, then the Heritage Council is not allowed to make that declaration unless the Territory Coordinator consents to it.

d) One example of a heritage place is the Wave Hill Walk Off site, which was damaged recently during the development of pastoral land. The tangible and intangible cultural heritage at this site is deeply valuable not only to Aboriginal people but to all Territorians.

e) The Bill directly impinges on the process under the Heritage Act to assess, declare and protect heritage places in the Northern Territory. This system is needed to preserve both Aboriginal and non-Aboriginal cultural heritage.

f) Whether the Territory’s heritage is protected should not be the decision of an unelected official who must adhere to the primary principle above all else.

(d) Whether the Bill has sufficient regard to the institution of Parliament

8. The Bill does not have sufficient regard to the institution of Parliament. This is because:

   a) It allows other legislation to be modified or excluded by notice from a Minister.

   b) Tabling an exemption notice on the next sitting day but allowing work to commence pursuant to that notice before Parliament considers it makes Parliament's authority subject to the Minister's, at least for that period.

   c) A unicameral parliament dominated by the government of the day does not provide an appropriate check or balance.

   d) The Territory Coordinator, an unelected government official, is given power to vary conditions of an approval imposed by a democratically elected Minister.

   e) The Territory Coordinator and Minister can make decisions and impose conditions and require other government agencies to carry them out, even if the decision and conditions are contrary to that agency's governing legislation as passed by Parliament.

   f) The Territory Coordinator is given a power to excuse a project proponent from complying with a condition already imposed under a lawfully given approval, just because the proponent is unable to comply with it. Placing that power in the hands of an unelected official undermines the authority given by Parliament to the entity that imposed that original condition.

   g) The reporting and transparency mechanisms in the Bill are not adequate to provide checks on the Territory Coordinator's powers.

   h) The Territory Coordinator is subject to direction from no one except the Minister, not even Parliament.

APPENDIX A

CENTRAL LAND COUNCIL

Submission on Territory Coordinator Bill 2024

17 January 2025

To: OTC.Consultation@nt.gov.au

ACKNOWLEDGEMENT

The Central Land Council acknowledges the Territory's traditional owners, who were the first inhabitants in the Territory and remain the first and most important stewards of the Territory's resources.

EXECUTIVE SUMMARY

1. The Central Land Council (**CLC**) and Traditional Owners support economic development. We support economic prosperity for ***all Territorians*** but we do not believe that economic prosperity should come at any cost.

2. The CLC and Traditional Owners are concerned that the *Territory Coordinator Bill 2024* (**TC Bill**), if enacted in its current form, will result in adverse social, environmental and cultural outcomes. We consider that too much weight is given to economic prosperity in the primary principle. Profits for private companies do not automatically equate to economic prosperity for Territorians. It cannot be an assumed outcome of major projects, where private profit may trump community benefit.

3. The CLC understands the Government's desire to "*provide a single point of contact, coordination and support for proponents of significant projects*" and "*facilitate collaboration and coordination between stakeholders*".[1] We believe that this desire can be achieved without giving the Territory Coordinator and the **Minister** for the Territory Coordinator the vast powers set out in the TC Bill.

4. The provisions of the TC Bill, especially the breadth of powers given to the Territory Coordinator and the Minister, go beyond the stated aims of the TC Bill. It places too much power in the hands of two persons to bypass requirements under the Northern Territory's long-established legislative framework.

5. The aims of the TC Bill could be better achieved by:

    a) proper resourcing of departments; and

    b) a thorough legislative and regulatory review process (with adequate periods for public comment) aimed at achieving lasting assessment and decision making improvements.

6. That would avoid any perceived need to empower the Minister to override legislation that Northern Territory parliaments have, for years, considered appropriately balance the interests of all parties.

7. The CLC's Executive Committee considered the TC Bill at its December 2024 meeting and resolved in EX2024.08.336 to object to it. This submission outlines key concerns about and objections to TC Bill, including the following:

    a) Section 14 is inadequate to protect Aboriginal people's rights and interests.

    b) The breadth and extent of power is inappropriate for an unelected government official.

    c) The powers given to the Minister are too broad, especially the powers to step into decision making roles and exempt certain laws from applying.

[1] Sections 12(d) and (e) of the TC Bill

d) The Territory Coordinator's and the Minister's decisions, when exercising the step-in and vary condition powers, must be subject to review under the relevant law.

e) The **primary principle**[2] must be amended to give equal weight to economic, cultural, social and environmental outcomes.

f) There must be clear and specific benchmarks on what constitutes a significant project.

g) The Minister must not designate any Aboriginal land, areas with exclusive native title, parks, reserves or environmentally protected areas as a Territory Development Area (**TDA**).

h) The Minister must consult with the public and interested parties[3] before designating an area of land or waters as a TDA.

i) Assessment of environmental, social and cultural values of a TDA must be completed with reference to a specific proposal.

j) Many objectives of the TC Bill could be achieved by increasing resources to existing governmental agencies, rather than establishing a new office which would likely increase strain the on them, potentially creating a log jam of routine assessments, permits and licences.

k) Regulations for the TC Bill are not available for comment rendering any consultation on the TC Bill incomplete.

8. The CLC considers that, if passed in its current form, the TC Bill and actions taken pursuant to it will be open to legal challenge.

[2] Section 8 of the TC Bill
[3] As defined in section 5 of the TC Bill

KEY CONCERNS ABOUT AND OBJECTIONS TO THE DRAFT BILL

A. The provisions of section 14 are inadequate to protect Aboriginal people's rights and interests.

9. The Consultation Paper released in October 2024, and assurances given during public meetings on the TC Bill, stated that the Territory Coordinator's role would not "*dilute or undermine … Aboriginal rights and interests*". The TC Bill, through section 14, does not achieve that aim.

10. Section 14 only applies to the Territory Coordinator, not the Minister. The greatest powers under the TC Bill lie with the Minister, particularly in relation to step in notices,[4] exemption notices[5] and condition variation notices.[6] Section 14 of the TC Bill would not stop the Minister, for example, interfering with the operation of the *Northern Territory Aboriginal **Sacred Sites Act** 1989* or the *Pastoral Land Act 1989* (which is, in fact a Scheduled Act whose operation could be entirely suspended by an exemption notice issued by the Minister). Section 14 must be amended to capture the Minister's powers under the TC Bill.

11. Aboriginal people (including but not limited to traditional owners and native title holders) have rights and interests outside of the legislation included in section 14. These include:

    a) Ownership and management rights in relation to Park Land Trusts and jointly managed parks and reserves in accordance with the *Territory Parks and Wildlife Conservation Act 1976* and *Parks and Reserves (Framework for the Future) Act 2003*, including areas under lease, covered by Indigenous land use agreements (**ILUAs**) or joint management plans.

    b) Consultation and other rights to ensure procedural fairness in relation to future acts and activities on Aboriginal land, such as the grant of authorisations, licences, permits, etc under other legislation including, for example, the grant of groundwater extraction licences, land clearing permits, non-pastoral use permits, mineral and energy licences and compulsory acquisitions.

    c) Requirements on decision makers to consider Aboriginal cultural values (including sacred sites) when making decisions, including, for example, under the *Water Act*, Pastoral Land Clearing Guidelines made under the *Pastoral Land Act* and the *Environment Protection Act 2019.*

    d) Requirements under Territory legislation to comply with the ***Native Title Act** 1993* (Cth) and *Aboriginal **Land Rights** (Northern Territory) **Act** 1976* (Cth) as a precondition to granting an interest under, for example, the *Mineral Titles Act 2010* (NT) or *Petroleum Act 1984* (NT).

12. Those rights are not protected by section 14 and ought to be. New subsections should be inserted into section 14 to include additional legislation and also incorporate a 'catch-all'

[4] Section 57 of the TC Bill
[5] Section 67 of the TC Bill
[6] Section 73 of the TC Bill

provision that mirrors the stated aim set out in the original consultation paper: that nothing in the TC Bill empowers the Territory Coordinator or Minister to *dilute or undermine Aboriginal rights and interests*.

13. While it is uncontentious law that the Territory Coordinator and Minister are not empowered to interfere with the operation of Commonwealth laws like the Land Rights Act or Native Title Act, the TC Bill does not expressly say so. Were a Territory Coordinator or Minister to erroneously impinge on those Acts, a judicial review application would be required.

14. The Guide to the Territory Coordinator Bill asks whether the ***Heritage Act*** *2011* (NT) should remain within section 14. It should. Along with the Sacred Sites Act, it is needed to preserve both Aboriginal and non-Aboriginal cultural heritage. The Heritage Act covers not only artefact scatters and archaeological sites, but also areas such as the Wave Hill walk off site, damaged recently during the development of pastoral land. That tangible and intangible cultural heritage is valuable not only to Aboriginal people, but to all Territorians and should be protected.

B. The breadth of power is inappropriate for an unelected government official.

15. The Territory Coordinator has extraordinary powers over 32 pieces of Northern Territory legislation (**Scheduled Acts**[7]) in relation to significant projects, work projects, Territory Development Area (**TDA**) activities and TDAs[8].

16. Given the breadth of proposed powers of the Territory Coordinator, the TC Bill is scant on the qualifications required to be fill that role.[9] The Territory Coordinator would not be subject to direction by any person other than the Minister and is not required to seek or take advice from those with subject matter expertise.

17. Concentration of power in two individual positions greatly increases the risk of corruption. This is particularly problematic given the Territory Coordinator is an appointed government official and cannot be voted out through an election process.

18. The CLC particularly objects to the Territory Coordinator (and, where applicable, the Minister) having the power to:

    a) Step-in to make a statutory decision or undertake a statutory process[10]

    b) Recommend that the Minister issue an exemption notice that certain laws do not apply to a statutory decision or a statutory process[11]

    c) Vary conditions in an existing statutory decision on certain grounds.[12]

[7] See Scheduled Acts in the TC Bill
[8] As those terms are defined in the TC Bill
[9] See section 79(1) of the TC Bill
[10] Subdivision 1, Division 3, Part 5 of the TC Bill
[11] Subdivision 2, Division 3, Part 5 of the TC Bill
[12] Subdivision 3, Division 3, Part 5 of the TC Bill

19. The CLC is also concerned that prioritisation, progression and decision requests[13] could lead to rushed and substandard decision making that operates to the long-term detriment of all Territorians. Further, the drafting of that Division leaves unclear the interaction between the TC Bill and other legislation, rending decisions uncertain and open to challenge.

Step-in Power (as applies to both Territory Coordinator and Minister)

20. No one person will have the necessary expertise to make decisions or undertake processes over the breadth of legislation encompassed within the Territory Coordinator's powers. The Scheduled Acts cover an enormous range of topics: planning laws, building control, environmental protection, water extraction, roads, ports, local government, minerals & petroleum, waste management and nuclear storage, to list a few. It is important to ensure that decisions are made and processes undertaken by statutory bodies with the necessary expertise and knowledge.

21. An example is the Environment Protection Agency (**EPA**) in which members are required to have knowledge and experience in a broad range of environmental, scientific, business and social disciplines to make complex decisions. The Territory Co-ordinator's expertise will not compare with the collective expertise and knowledge of the EPA and CLC strongly opposes the Territory Coordinator being able to step in and make important decisions about environmental approval process.

22. It is deeply concerning to the CLC that even if the Territory Coordinator obtains advice from experts with the requisite knowledge on a complex development, the final decision will ultimately rest with the Territory Coordinator whose qualifications to make such a decision are not stipulated and whose decisions remain subject to the primary principle.

23. The Territory Coordinator is required to "consult" the responsible entity for a statutory decision before giving any step-in notice[14] and but is not required to seek technical advice from that entity after a notice has been issued.[15]

24. Even if the Territory Coordinator does seek advice, she or he is not required to actually "consider" the advice of the responsible entity. Nor does the TC Bill specify any criteria pursuant to which the Territory Coordinator could refuse to follow that advice. Without such criteria, the Territory Coordinator could ignore important scientific, environmental or cultural advice or approve under-considered and inappropriate applications simply by relying on a subjective interpretation of the primary principal[16]. There is also no obligation on the Territory Coordinator to provide reasons for not following advice or to make those reasons public.

25. Decision making criteria should be incorporated into the TC Bill, not only to provide clarity to the Territory Coordinator, but to allow the public to know factors relevant to the Territory

[13] Division 2, Part 5 of the TC Bill
[14] Section 58 of the TC Bill
[15] Section 60 of the TC Bill
[16] See Section E below, in relation to the primary principle

Coordinator's decisions and how frequently the Territory Coordinator departs from the responsible entity's advice.

26. Furthermore, the Territory Coordinator is not required to consult any interested parties[17] whose interests may be adverse affected by the step in notice. This is the case whether or not those parties would have had consultation rights under the legislation governing the responsible entity.

27. Under the TC Bill, the Territory Coordinator is permitted to impose any condition to promote the primary principle or benefit the Territory.[18] Those criteria are too broad and allow the Territory Coordinator to impose conditions markedly different than those which Territory parliaments have determined to be appropriate when they passed the original legislation under which decisions are made. The interaction between the TC Bill and other legislation is made unclear by inclusion of the words "Subject to this Subdivision" in section 61(2) and they should be omitted.

28. The extraordinary step-in powers given to the Territory Coordinator and Minister are reminiscent of former Prime Minister Scott Morrison's controversial decision to be the minister for five other portfolios despite there being incumbent Ministers appointed to do that job. While the step-in role is being made public, it is no less inappropriate.

29. The provisions relating to step-in notices should be amended to:

    a) Require consultation with interested parties and others whose interests may be affected by the decision, and require serious consideration of their views.

    b) Require consideration of advice from the responsible entity, and provide public, contemporaneous reasons if that advice is not followed.

    c) Include criteria on which the Territory Coordinator or Minister can refuse to follow the responsible entity's advice.

    d) Require the Territory Coordinator or Minister to follow the same statutory processes and consider the same relevant considerations as the responsible entity would have done under its governing legislation.

    e) Remove the words "Subject to this Subdivision" from section 61(2) so that it is clear the relevant law governing the statutory decision applies and has full effect.

Vary Condition Power (as applies to both Territory Coordinator and Minister)

30. The Territory Coordinator or Minister can vary conditions on a statutory decision in a range of circumstances, including when an applicant (for the decision) fails to comply with the law or a condition of a statutory approval.[19] With the consent of the proponent, they could

[17] As defined in section 5 of the TC Bill
[18] Section 61(1)
[19] Section 71(1)(d)(iii) of the TC Bill

impose conditions which would not have been allowed by the law under which the statutory approval was previously made.[20]

31. This allows prior breaches of statutory conditions or other NT laws to be excused. The Territory Coordinator and Minister should be required to treat non-compliance with existing approvals seriously and allow the responsible entity to pursue appropriate remedies, not retrospectively change the conditions. To do so encourages cowboy behaviour from proponents and removes consequences for disregarding the law.

32. There is no obligation to consult with interested parties or other people whose rights and interests may be affected by variation of a condition on an existing approval or decision. For example, a decision might require a proponent to undertake a social and cultural impact assessment in a particular manner. Variation to that condition would impact the people whose society and culture was to be the subject of that assessment. They ought to be given opportunity to comment on and have input into any proposed variation, and have their views seriously considered.

33. Similarly to recommendations for the step in powers, the provisions relating to condition variation notices should be amended to:

    a) Remove the power of the Territory Coordinator or Minister to excuse breaches of existing approvals or NT laws.

    b) Require consultation with interested parties and others whose interests may be affected by variation of a condition, and require serious consideration of their views.

    c) Require consideration of advice from the responsible entity, and provide public, contemporaneous reasons if that advice is not followed.

    d) Require the Territory Coordinator or Minister to follow the same statutory processes and consider the same relevant considerations as the responsible entity did under its governing legislation when making the condition proposed to be varied.

C. The powers given to the Minister are too broad, especially the power to exempt certain laws from applying.

34. Submissions regarding the Minister's proposed powers in relation to step-in and vary condition notices are set out above. In addition, the CLC strongly opposes giving power to the Minister to modify or exclude the operation of the Scheduled Acts, in whole or part.

35. It is a remarkable position that any Minister be given the power to override legislative decisions of previous parliaments without specific legislation, particularly when the grounds for doing so are as broad as, at its simplest, that the Minister thinks it will drive economic prosperity. The draft TC Bill is so devoid of objective criteria for issuing an

[20] Section 71(1)(b) and 72(1) of the TC Bill

exemption notice[21] that it would come down to a Minister's subjective view of how the primary principle should be interpreted.

36. To enact this power is contrary to legislative convention, both in the Northern Territory and across Australia. That convention is reflected in the NT Legislative Scrutiny Committee Orders, which state that a bill "*authorises the amendment of an Act only by another Act*".[22] The power for a Minister to issue exemption notices in section 67 is in direct contravention of that principle and undermines the supremacy of Parliament.

37. This is particularly important when the Scheduled Acts are so important and broad, and affect all areas of life in the Northern Territory. The potential impact on the rights and interests of interested parties and others is so significant that they should only be impinged by an Act of Parliament, not a Ministerial notice. These powers pose significant risk to environment and cultural values especially in a jurisdiction where there are already a number of legacy mines generating toxic waste and causing significant environmental harm.

38. Subdivision 2 of Part 5 of the TC Bill provides no procedural rights to persons whose rights or interests may be impaired. There is no requirement for consultation with them, nor serious consideration of their views. No procedural fairness is offered.

39. The supposed "check" on exemption notices is negligible when any government in power has a majority in the unicameral Legislative Assembly and is unlikely to pass a disallowance motion stopping the Minister from issuing the exemption notice. The Minister is also unlikely to override a recommendation of the Territory Coordinator when the Minister has worked closely with the Territory Coordinator on it.

40. Depending on the timing of a notice and parliamentary sitting dates, there may also be a lengthy lag between the notice and the opportunity for a disallowance motion. That lag means substantial work could be done pursuant to an exemption notice prior to it being disallowed or even the public become aware that an exemption notice has been issued.

41. Section 14 does not apply to the Minister and exemption notices can only be issued in conjunction with step-in notices. That gives the Minister a relatively unfetted power to intervene in decisions under the Scheduled Acts in relation to significant projects, work projects, TDAs and TDA activities in a way that does *dilute and undermine Aboriginal rights and interests.* That power is expressly contrary to assurances made in consultation documents, at consultation meetings and in media commentary around the TC Bill.

42. The CLC strongly recommends that the exemption notice power be removed from the TC Bill.

43. Notwithstanding the objection to that power in its entirety, if it is pursued, then:

    a) Section 14 must be amended to include the Minister.

[21] Whether in Subdivision 2 of Part 5 or in the definitions of economic significant (in section 4) or the primary principle (in section 8)
[22] Sessional Order 14, Clause 3, Northern Territory Legislative Scrutiny Committee

b) The Territory Coordinator must be required to consult with and consider the views of interested parties, those affected by a proposed exemption notice and the public generally prior to it being issued.

c) Grounds on which an exemption notice may be recommended by the Territory Coordinator and issued by the Minister should be made specific, objective and not left to subjective interpretation of the primary principle.

d) Any notice ought to be made public immediately and no work should commence in respect of a notice until the matter has been brought before parliament.

e) Amend sections 66 and 67 to:

   i. Require consideration of advice from the relevant department.

   ii. Set out objective criteria prescribing limited circumstances in which that advice may be departed from

   iii. Require public, contemporaneous provision of reasons if that advice is not followed.

D. The Territory Coordinator's and the Minister's decisions, when exercising the step-in power, must be subject to review under the relevant law.

44. The CLC strongly objects to the Territory Coordinator's decisions not being subject to review or appeal under the TC Act or the relevant law.[23] CLC does not consider that the Territory Coordinator reviewing its own performance, even if directed to do so by the Minister,[24] is an adequate or acceptable review process.

45. Given the breadth of the decisions that the Territory Coordinator will be able to make under the Scheduled Acts, it is imperative that those decisions be subject to independent merits review and appeal processes already existing under the Scheduled Acts. Those processes have been adopted, refined and maintained by Territory parliaments over many years. It is antidemocratic to give an unelected official power to make decisions across such a breadth of legislation with no possibility of merits review, when parliaments have already determined that merits review is appropriate.

46. While judicial review rights remain under the TC Bill, exercising them would be expensive and may lead to protracted litigation, with the unintended consequence that decisions are delayed for years in court. Merits review may not only increase the quality of decisions being made, but also avoid the need for judicial review and speed up approval of projects.

47. Maintaining the review and appeal processes under existing legislation will ensure that there is a layer of protection for both applicants and Territorians, particularly interested parties, from decisions made by the Territory Coordinator.

[23] Section 62(1)(a) of the TC Bill
[24] Section 91(1) of the TC Bill

48. CLC's position also applies to when the Minister exercises the step-in power.

E. The primary principle must be amended to give equal weight to economic, cultural, social and environmental outcomes.[25]

49. The CLC cannot support the primary principle as currently drafted in clause 8 of the TC Bill. It places far too much weight on the objective of economic prosperity.

50. The CLC and Traditional Owners[26] support economic prosperity for ***all*** Territorians. However, economic prosperity should not come at any cost and without equal regard to other significant considerations including the environment, culture and social impacts.

51. Far too often, Traditional Owners and local Aboriginal communities located in proximity to significant projects are the Territorians most negatively affected by the social, cultural, economic and environmental outcomes associated with these projects.

52. Impacts on Traditional Owners can be particularly acute because of their relationship with their natural environment. These impacts may be direct (such as disruption to ceremonial sites or hunting grounds) or indirect (for example, downstream impacts on sacred trees due to lowering of the water table that can occur many kilometres from a mine or a farm).

53. In addition, Traditional Owners generally resume the land at end of project life, and stay living near the project area during periods of care and maintenance.

54. The CLC submits that:

    a) Given the potential *cultural* impact of a project, the Minister or Territory Coordinator must also have regard to any cultural outcome.

    b) In making any decisions, equal weight must be given to:

        (i) the economic, social, environmental and cultural outcomes for the Territory and a region of the Territory; and

        (ii) the relevant objects, principles or considerations under the other Scheduled Act.

    c) The primary principle in the TC Bill **must not prevail** to the extent of any inconsistency with the relevant objects, principles or considerations under other Scheduled Acts.

55. The Territory government is responsible for the environmental, social and cultural health of the Northern Territory. It must give equal weighting to these considerations when assessing a development proposal and the risk of the environmental, social and cultural values of the Territory being adversely affected. The proposed amendment to section 8(1)

[25] Section 8 of the TC Bill

[26] The use of the term "Traditional Owners" is used to include all types of Aboriginal land owners, including traditional Aboriginal Owners as defined in the *Aboriginal Land Rights (Northern Territory) Act* 1976 (Cth) (**Land Rights Act**) and native title holders as defined in the *Native Title Act 1993* (Cth).

below could achieve that aim and ensure that any decisions made comply with existing legislative requirements.

56. Sections 8(1) and (2) should be amended as follows:

> *The primary principle of this Act is that, when:*
>
> *a) exercising a key power under this Act; or*
>
> *b) exercising a power or performing a function under any Act in connection with the exercise of a key power,*
>
> *the Minister or Territory Coordinator must have regard to the economic, social, environmental and cultural outcome for the Territory or a region of the Territory in addition to any relevant objects, principles and considerations under the other Act.*

F. There must be clear benchmarks on what constitutes a significant project.

57. Given that the declaration of a project as a "*significant project*" will result in the Territory Coordinator and Minister having substantial powers under Part 5 of the TC Act, the threshold of "*economic significance*" is too low.[27] A project or development is of "*economic significance"* if it merely facilitates job creation or population growth[28]. A small farm in a remote region could fall into that category.

58. The CLC considers that:

a) a project must be of ***major*** economic significance to constitute a significant project; and

b) the TC Act must set out measurable benchmarks on what would constitute a "*significant project*".

59. Criteria already developed for a project to receive "*major project status*" could be repurposed for this context.

60. The benchmarks must include details of a rigorous independent review process that can assess the projected economic and employment benefits of a proposed significant project against available evidence. This will ensure forecast economic and employment outcomes are scrutinised by independent experts and provide assurance for Territorians that perceived benefits are not illusory. This process should be independent and tabled in Parliament to ensure public faith, transparency and accountability, with appropriate protections for commercial confidentiality (as necessary).

61. Amendments should be included in sections 4 and 17 to incorporate that.

[27] Section 17(1)(a) of the TC Bill
[28] Section 4 of the TC Bill

G. The Minister must not designate any Aboriginal land, areas with exclusive native title, parks, reserves or environmentally protected areas as Territory development areas.

Aboriginal land and exclusive native title

62. The Guide to the TC Bill (**Guide**) contemplates a TDA to include Aboriginal land. The Guide claims that:

    a) "*the Territory Coordinator will work collaboratively with Traditional Owners and Land Councils to support and unlock the economic aspirations";*[29] and

    b) the Territory Coordinator must comply with the processes set out in the *Aboriginal Land Act 1978* (**Aboriginal Land Act**) when carrying out any TDA activities.[30]

63. These requirements are not set out in the TC Act.

64. The TC Act does not require the Minister to consult with the Land Councils or Traditional Owners before designating any Aboriginal land as a TDA. It does not require the Territory Coordinator or Minister to comply with the Land Rights Act or the Aboriginal Land Act. Instead, it purports to grant a right of entry and authority to undertake specified activities contrary to both the Land Rights Act and Aboriginal Land Act.[31]

65. The CLC strongly objects to the Minister having a unilateral power and discretion to designate any area of Aboriginal land as a TDA, particularly without the free, prior and informed consent of Traditional Owners in accordance with the Land Rights Act.

66. The same considerations apply to areas where exclusive native title has been determined to exist.

Parks, reserves and protected environment areas

67. TDAs should not be established in environmentally important areas such as national parks, reserves and protected environmental areas.

68. A new sub-section must be inserted in section 28 of the TC Act as follows:

    "*The Minister must not designate an area of land to be a Territory development area if any part of that area of land or water is:*

    a) Aboriginal land within the meaning of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth);

    b) a Commonwealth reserve within the meaning the Environment Protection and Biodiversity Conservation Act 1999 (Cth);

[29] Page 9 of the Guide
[30] TDA activities has the meaning given to that term in section 3 of the TC Bill.
[31] Sections 30 and 31 of the TC Bill

c) *a park or a reserve within the meaning of Territory Parks and Wildlife Conservation Act 1976; and*

d) *a protected environment area within the meaning of the Environment Protection Act 2019.*

H. The Minister must consult with the public and interested parties before designating an area of land or waters as Territory development area.

69. It is unacceptable that the Minister is not required to consult with anyone before designating an area as a TDA. This is especially in the context of the Territory Coordinator and the Minister having significant powers if a TDA is declared.

70. The Minister must be required to consult with the public and interested parties before designating an area as a TDA. The TC Bill must also incorporate a process of consulting with native title holders about the draft TDA plan.

I. Assessment of environmental, social and cultural outcomes and values of a TDA must be completed with reference to a specific proposal.

71. Under the TC Bill, when making a TDA plan the Territory Coordinator is required identify, amongst other things, the environmental and social values and outcomes for the plan area.[32]

72. The TC Bill must be amended to ensure that any assessment of environmental, social and cultural values must be undertaken with reference to a specific proposal. It must not be an assessment undertaken where the impact of a future project is not known, nor a generic assessment that purports to cover projects of any type or nature.

73. Cultural values and outcomes must also be assessed. CLC submits that a Sacred Site Clearance Certificate (**SSCC**) must be obtained from CLC for any specific project undertaken in its region.

74. SSCCs provides protection against prosecution for entering, damaging or interfering with sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) and the Land Rights Act. The CLC's SSCC process was endorsed in the Mineral Council of Australia's submission to the Juukan Gorge Inquiry[33].

75. Compensation for "*damage to land*" in section 32 must be expanded to cover any damage to sacred sites as well as spiritual and cultural connections to that land.

J. Establishing the Territory Coordinator office would likely strain the existing resources of governmental agencies which are already struggling.

[32] Section 34(1) of the TC Bill
[33] Minerals Council of Australia, submission to the Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia, p 9, sub 104

76. Establishing the Territory Coordinator office will result in additional bureaucracy. It is contemplated that government agencies can second staff to the Territory Coordinator's office.

77. With government agencies being stretched with limited staff and resources, the secondment of staff to the office of the Territory Coordinator may lead to further inefficiencies and delays in significant projects.

78. Instead, the NT Government should provide adequate resource to the existing agencies to fulfil their roles particularly given their staff have been employed for their expertise.

K. Regulations for the TC Bill are not available for comment rendering any consultation on the TC Bill incomplete.

79. The regulations for the TC Bill are not available for consultation and comment. They form a critical component of the legislative regime about which the public has a genuine interest.

80. Regulations should be drafted and made available for public consultation before the TC Bill is introduced into parliament.

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