



# Environmental Defenders Office

## Briefing Note

### Territory Coordinator Bill 2025: What has changed since the draft Bill?

#### 13 February 2025

On 12 February 2025, the Territory Government introduced the *Territory Coordinator Bill 2025* (**Bill**) to Parliament. The Parliament's Legislative Scrutiny Committee is conducting an inquiry on the Bill and is [accepting submissions until close of business on 19 February 2025](#). It is due to report back to Parliament by 12 March 2025.

Below we summarise the most significant changes between the Exposure Draft of the Bill and the Bill as introduced to Parliament. The **Appendix** to this Briefing Note sets out other changes from the Exposure Draft to the Bill.

Our previous Briefing Note containing a detailed analysis of the Exposure Draft is available [here](#). Overall, **the key concerns and issues we identified in that analysis have not been addressed**, and in some instances, have been exacerbated by further changes to the Bill.

#### Summary of Key Changes

- **Removal of certain limitations on the exercise of powers:** The Exposure Draft of the Bill included a limitation provision (previous clause 14) that prevented the Territory Coordinator (**TC**) from exercising the powers under the Act in a manner that would interfere with an agreement between the Territory and the Commonwealth or interfere with or modify specified Territory legislation. That covered: the protection of sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989*, the protection of heritage places or heritage objects under the *Heritage Act 2011*, the operation of the *Aboriginal Land Act 1978*, exercise by Aboriginal persons of rights under the *Pastoral Land Act 1992* and the recognition and protection of native title rights and interests under a law of the Territory. This limitation has been removed.<sup>1</sup>
- **Creation of infrastructure coordination areas and plans:** The Bill now includes a new concept of an Infrastructure Coordination Area (**ICA**). This gives the TC new and expanded powers that can be

---

<sup>1</sup> The Territory Government does not have the power to modify, exclude or override Commonwealth laws which might apply to projects, such as the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) or the *Aboriginal Land Rights (Northern Territory) Act 1975* (Cth) (**ALRA**).

exercised over land and waters and to assist ‘significant projects’ take shape. Its purpose is ostensibly for the development of an Infrastructure Coordination Plan (**ICP**).

- The process of declaring a project to be a ‘significant project’ is similar to that in the Exposure Draft. But now in the Bill an ICA declaration can be made under clause 25 “for the purpose of investigating the suitability of the area for the declaration of an ICP”. A declaration can apply to “an area of land or water that is necessary to investigate for the construction or operation of a significant project to be an infrastructure coordination area”.
- An ICA declaration will have consequences for statutory decisions and statutory processes that apply to the same area as the ICA because clause 26 will require any responsible entity, for a statutory decision or statutory process, to seek the TC’s views and take these into account in the decision. The request powers (prioritisation, progression and decision) and notice powers (step-in, exemption and condition-variation) in Part 7 of the Bill also apply to ‘IC activities’ – being activities to facilitate the implementation of ICPs or projects permitted under ICPs.
- **New requirement to seek TC’s views on decisions and processes in TDAs:** As is the case for ICAs, the Bill introduces in clause 45(1), a new requirement for a responsible entity to seek the TC’s views on any application for a statutory decision or regarding a statutory process in relation to a Territory Development Area (**TDA**) where a TDA plan is not in effect. The TC’s views must be taken into account in the decision.
- **Requirements to ensure decisions and processes are consistent with ICPs and TDAs:** The Minister will now give notices on the approval of an ICP under clause 37. The notices require a responsible entity to ensure any statutory decision or statutory process in relation to an activity in an ICA is consistent with the ICP, or seek the TC’s consent to decide otherwise. Section 52(1) of the Bill similarly introduces a new requirement for a responsible entity to carry out functions (under their own empowering legislation) in a manner consistent with a TDA plan. A decision or process can only be inconsistent with the plan if the TC consents. These provisions give the TC significant additional control over decisions without having to exercise the more interventionist request and notice powers under Part 7.
- **Step-in notices not required to use exemption power:** It is no longer a pre-condition to the Minister making an exemption notice that a step-in notice has already been issued in relation to the relevant statutory decision or statutory process, expanding the circumstances in which this far-reaching power can be used. For further concerns with the exemption power, see our previous [Briefing Note](#) at p 17-18.
- **Change to the circumstances in which condition variation notices can be issued:** Notices to vary the conditions of an approval can be issued where the TC is satisfied, on reasonable grounds, that the variation is in connection with the “*inability*” of the approval holder to comply with a requirement under a Territory law or the approval. This may be intended to address our concern

that the language in the Exposure Draft, which referred to a “*failure*” to comply, could effectively excuse prior breaches of conditions or Territory laws. However, our other concerns with the condition variation power remain unaddressed in the Bill – for further analysis, see our previous [Briefing Note](#) at p 17.

- **Changes to scope of powers to enter land and conduct works:** The TC can now authorise people to enter land within an ICA to carry out work in relation to an ICP, in addition to doing so on TDAs in relation to the development of a TDP. Timeframes to provide written notice to enter land have been increased from 7 to 14 days and there is an express prohibition on entering residential land. Other concerns with these powers remain unaddressed: see our previous [Briefing Note](#) at p 18.
- **Inclusion of the Heritage Act and Electricity Reform Act in the Schedule:** The Schedule of relevant laws now includes the *Electricity Reform Act 2000* and the *Heritage Act 2011*. During the consultation on the Exposure Draft, the government sought feedback on whether the request powers *only* should be applicable to the *Heritage Act*, however no such limitation appears in the Bill. This means that the full range of powers under the Bill could be applied to, for example, processes and decisions to approve work being carried out on a heritage place or object, including works which would impinge on Aboriginal and Macassan archaeological places and objects, which are automatically protected under the *Heritage Act*.
- **Removal of certain laws from the Schedule:** The Schedule of relevant laws no longer includes the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* or the *Offshore Waters (Application of Territory Laws) Act 1985*, the latter of which did not contain any statutory processes or decisions to which the Bill could have applied. However, other Acts such as the *Radiation Protection Act 2004*, the *Radioactive Ores and Concentrates (Packaging and Transport) Act 1980* and the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010* remain in the Schedule. See [Appendix 1 to our previous Briefing Note](#) for more information about statutory decisions and processes under those laws.
- **Changes to publication requirements for decisions under the TC Bill:** There is no longer any requirement to publish prioritisation, progression or decision-making requests on the Territory Coordinator or an agency’s website, though such requests are now required to be published on the public register along with other types of decisions under the TC Bill: see Clause 96. The Bill does not provide further details as to the location or accessibility of such a register.

--

If you have any questions about the material in this Briefing Note or the Appendix below, please contact our office at [darwin@edo.org.au](mailto:darwin@edo.org.au).

## Appendix: Table of changes

In the Table below is a list of other changes to the Bill following its release as an Exposure Draft. Please note this is not an exhaustive list.

The Table includes the clause numbers as appear in the Bill. Most clauses appear in a different order to the sequence in the Exposure Draft due to the inclusion of a number of new provisions.

Bill Clause	Changes from Exposure Draft	Implications of changes
Clause 3 - Definitions	Bill now includes a definition of <b>owner or occupier</b> for land. This includes someone who is a registered owner of land, any person with an interest in the land recorded on the National Native Title Register and a person who can be readily identified as the occupier if neither of the preceding persons are occupiers of the land.	Implications for who can consent to entry on land for clause 93 and compensation for damage to land under clause 94.
Clause 8(1)(a)	The primary principle now refers to the primary objective of driving “economic development” rather than “economic prosperity”.	Implications for the exercising of all key powers specified in clause 8(3) where this will be the primary principle.
Clauses 24(2)(a), 41(3), 43(4), 53(3)	Notice of decisions on a significant project, approval of program of works, designation of an area as a TDA and variation of boundaries of a TDA are now to include reasons for the decision.	A measure of transparency in decision-making.
Clause 29(b)	TC must consult publicly on an ICP. However, the form of consultation is not clear (it is to be prescribed by the Regulations).	Exposure Draft only required TC to consult the Department of Treasury and Finance and each public body and public entity identified in the plan.
Clause 38	New definition for <b>program of works</b> .	Implications for what responsible entities must implement once program of works approved by Minister under clause 41.
Clause 39(2)	Bill now includes requirements for what programs of works are to include.	Greater detail on what must be included.
Clause 47(3)	A TDA plan can establish an authority for the TDA plan.	It’s not clear what the status of this body would be or how it functions, based on the provision allowing for its establishment by the TDA plan.
Clause 63(3)	Provides for Part 7 powers to apply to ICAs and TDAs as if the areas were IC activities or TDA activities.	This means where an empowering provision of the Part says “IC activity” or “TDA activity” this could include using the power in an ICA and TDA (as areas of land and water).

Clause 64(1), 65(1), 66(1), 77 and 84	Requests, exemptions and condition variation notices can be given for IC activities.	Expanded scope of powers.
Clause 65(6)	Progression-related requests pause statutory timeframes.	A statutory timeframe applying to a statutory process will be paused when the request is given.
Clause 73(2)	Now provides that, in imposing conditions permissible under the relevant law on the making of a statutory decision under a step-in notice, the TC may also impose any conditions considered necessary or desirable to promote the primary principle.	Expands the consideration of economic development in conditioning and potentially expands types of conditions imposed.
Clause 74(3))	Statutory decision under a step-in notice can take effect on date notice is given or “any later date specified in the notice”.	Greater flexibility in TC using power.
Clause 76	Provides for a responsible entity to subsequently alter or impose conditions on a decision once TC has issued step-in notice and now with requirement to seek the TC’s consent and, in subclause (3), a greater opportunity to apply or renew a condition imposed by TC under a step-in notice despite anything to the contrary in the relevant law.	Greater powers for TC to continue to direct a responsible entity’s implementation of decision under a step-in notice and to override the relevant law a decision is made under in imposing conditions.
Clause 77(2)	Removed the prohibition on giving an exemption notice in relation to a statutory decision or statutory process that involves “a requirement under the <i>Environment Protection Act 2019</i> or any regulations made under that Act that relates to an assessment under a bilateral agreement with the Commonwealth”.	The Exposure Draft prevented these requirements from being exempt, but this has been removed.
Clause 78	Change to grounds for giving exemption notices.	Slightly different circumstances to those in Exposure Draft.
Clause 82(3)	Notice of a resolution to disallow an exemption notice must now be tabled 6 sitting days after the notice was tabled or required to be tabled, not 3 sitting days.	Different Parliamentary procedure.
Clause 85	Changes to the circumstances when condition variation notices can be made, including that a variation is in connection with an inability to comply with a legal requirement.	Change to scope of when condition variation notice can be issued.
Clause 86	Bill now provides that a condition imposed under a condition variation notice is taken to be a valid condition under the law the original decision was made under (whether or not that condition could otherwise be made under the original law).	New conditions can be imposed that would not necessarily be expected under a statutory approval.
Clause 95	Now includes express limitation on review or appeal.	Prevents review or appeal rights being given for TC decisions, except for judicial review in the Supreme Court.
Clause 96	Register of information is required to now include additional matters.	Public can inspect the register.
Clause 99	TC annual report to the Minister must now include a copy of each variation notice and step-in notice, in addition to each exemption notice.	Notably does not include the TC request powers.