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Department of Chief Minister and cabinet
Via e-mail to: OTC.consultation@nt.gov.au'

To whom it may concern

SUBMISSION TERRITORY COORDINATOR BILL

I am writing to express my deepest objection to this draft legislation.

If approved it will lead to the erosion of democratic rights, not treat everyone equally, lead to poor decisions, create uncertainty and open the Territory to corruption.

The Northern Territory is already a great place for business. We need community development with a focus on equity and building upon our comparative advantages to build a sustainable budget, community and environment.

My submission draws upon experience from having worked as a public servant in multiple jurisdictions, focused largely on water resources, environmental and planning legislation.

In my submission I outline the following reasons for my objection.

1. Consultation has shown this proposal is deeply opposed by the public
2. The proposed legislation will not give certainty to business (or other stakeholders or the environment)
3. The proposed legislation could lead to corruption
4. Goes against NT experience that more not less transparency is needed for sound decisions
5. "Step in" powers unacceptably diminish opportunity for the public and public servants to participate in decisions resulting in worse decisions
6. Impossible skill set needed for the Territory Coordinator position
7. Misleading public engagement due to flawed rationale on the need for the Territory Coordinator being presented during consultation meetings
8. The government has not demonstrated the need for the Territory Coordinator legislation
9. Central Australian case studies showing unacceptable risks
10. Submission on earlier draft dated 5 November 2024.
11. Alternative proposal

I expand on each of these objections below.

Reasons for objection

1. Consultation has shown this proposal is deeply opposed by the public

The level of concern and widespread public opposition needs to be acknowledged. This level of concern is highly unusual and widespread. I attended the public meeting in Alice Springs. The meeting went for around two hours. During this time there was zero public support and a barrage of questions surrounding the proposal, to which many of the answers were widely considered unsatisfactory.

Failure to acknowledge the level of concern and properly address these real concerns raised during consultation meetings would be a deep failure of justice.

2. The proposed legislation will not give certainty to business (or any other stakeholders or the environment)

The acting Territory Coordinator reiterated that the purpose was to provide certainty to business.

Yet this legislation creates uncertainty by enabling variation as to when and how laws are applied, if at all. This introduction of discretion will inevitably lead to individuals and business seeking variations.

Going forward nothing will be certain. It reduces certainty for business as to what the expectations upon them are, as well to environmental outcomes.

From my experience in applying legislation I am absolutely confident that this will make it harder for public servants to even-handedly apply legislation. More powerful applicants will question whether the policies guiding how legislation applies apply to them and seek to by-pass public servants.

3. The proposed legislation could lead to corruption

This legislation gives an unelected individual discretion to vary how laws are applied. The exemption provisions give the Minister even wider powers. These wide ranging powers make the positions of Territory Coordinator and also the Minister vulnerable to approach from individuals and businesses standing to make very large benefits by variations to how laws are applied. This is made worse as their decisions are based on the unclear and very subjective grounds of what constitutes economic prosperity and the “primary principle”.

This subjectivity in how and when these powers are applied and what constitutes economic prosperity will create perceived and actual risks of corruption.

4. Goes against NT experience that greater transparency not less transparency is needed for decisions to be sound

The Northern Territory is a small jurisdiction, with one house of Parliament, and a small population, resulting in inevitable proximity between applicants, politicians and bureaucrats. It relies on absolute transparency in how laws are applied. This was the experience in the Stylo Station water licence where a former NT political candidate Tina Macfarlane was controversially granted a water licence larger than her property, ever would have needed. This was at odds to the approach to water licensing in the area[1]. A review recommended decision-making processes be made more transparent through checklists and paperwork. This legislation conflicts with that finding.

It is easy to see how the Territory Coordinator, with a minimal understanding of water licensing could similarly miss-apply the “step in” powers to enable more bad decisions like this.

5. Step in powers unacceptably diminish opportunity for the public and public servants to participate in decisions resulting in worse decisions

While the Coordinator is required to consult with the responsible entity, ultimately the draft legislation allows the Coordinator to “step in”. Furthermore under proposed clause 62(1)(a) if this happens the subsequent decision cannot be appealed or reviewed.

This step in power which changes how a law is applied and appeal provisions is unacceptable. My experience is that statutory processes, including review and appeal need to be fully and consistently applied for proposals to be properly assessed on their merits and natural justice afforded to all parties.

It cannot be assumed that the initial advice received from the department/decision making entity can obviate the need for full and proper application of statutory processes, as it removes the full opportunity for the public to make submissions and seek review; and sidelines public servants skilled in the area to participate throughout.

The Singleton groundwater licence is a clear example where decision makers within the department clearly held different views to the public about the acceptability of severe impacts on the environment in granting this licence. As these impacts are extremely severe and risk creating regional precedents, it is therefore necessary that the process be applied fully, with involvement of professionals skilled in the area and that stakeholders have every appeal and review right available under legislation. This would not happen under this draft legislation.

6. Impossible skill set needed by the Territory Coordinator position

In the public meeting it was clear that the Acting Co-ordinator lacked familiarity with the 32 pieces of legislation which are subject to this bill.

This is inevitable. It is an absolutely impossible ask to have such familiarity. Furthermore if the person were to be such an expert in Northern Territory legislation they are unlikely to

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[1] https://www.ntnews.com.au/news/nt-water-review-finds-tina-macfarlanes-property-was-granted-licence-for-more-water-than-it-could-use/news-story/7a9f44bc6ca7c87c02fa9004a9031fe6

understand the social and technical underpinnings of the legislation or be sufficiently familiar with stakeholder interests.

Handing over powers to apply legislation to a person who is ignorant of the nuance of the legislation, its technical underpinnings and repercussions of decisions will lead to shallow decisions. This is an unacceptable degradation of decision making processes. It will lead to worse decisions and poor precedents.

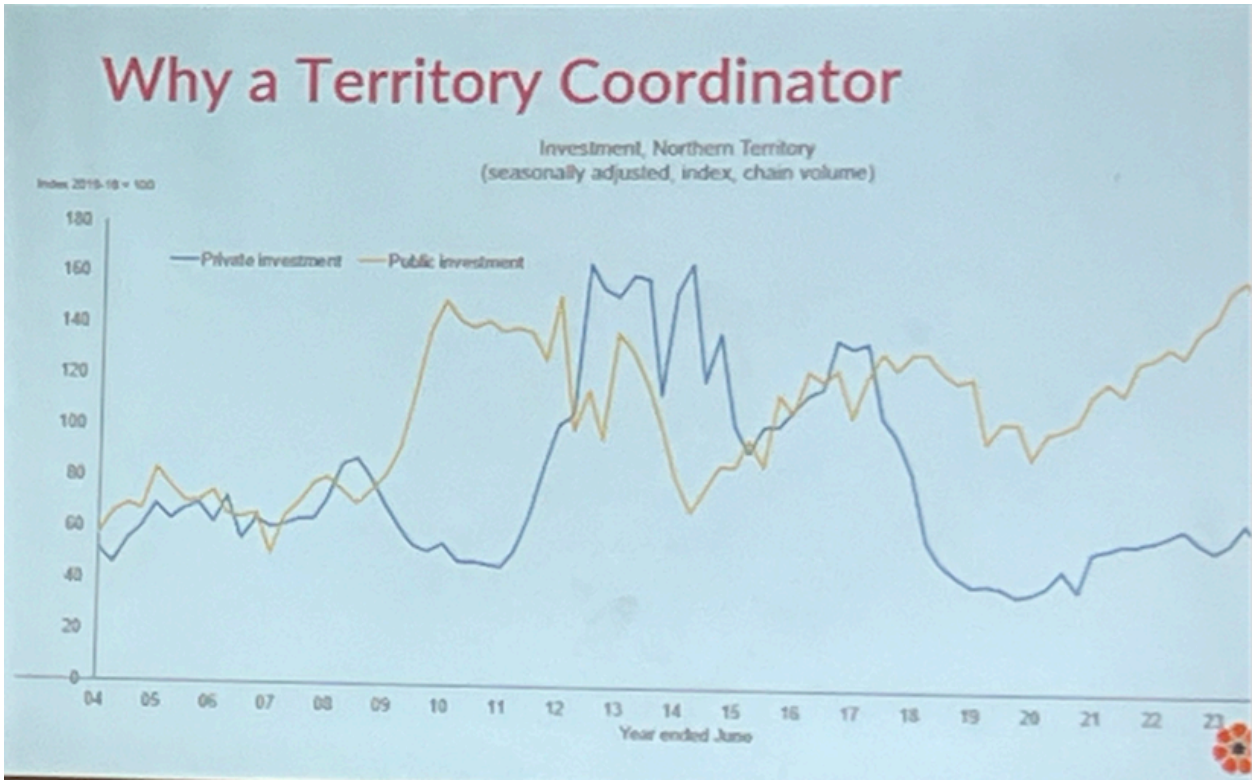
7. Misleading public engagement due to flawed rationale on the need for the Territory coordinator being presented during consultation meetings

During consultation the Acting Territory Coordinator laboured the following graph showing public versus private investment below as the reason for the role. This felt misleading and flawed. It expresses an ideology about how best to achieve a balanced budget rather than an absolute truth. It therefore detracted informed debate and consent.

While small government may be the government's preferred approach (to my recollection) the graph was not linked to the budget bottom line and was couched as the only approach. This rationale is clearly flawed. Building the capability of all Territorians through investment in health, education, healthy environments and infrastructure is an alternative approach that will grow the economy on an ongoing basis and expand its productive capacity as is highlighted in the Federal Government Budget 2024-25 Fiscal strategy and outlook[2]. Through this approach increased government funding could be sustained, with all Territorians benefiting, rather than just private investors.

In addition to my concern about how this graph misled the audience, it is my view that a different pathway focused on opportunity for all Territorians is far better and more sustainable than occasional sugar hits to the economy that occur when occasional big projects are in their construction phase,, which seems to be the story told in the graph below.

[2] https://budget.gov.au/content/bp1/download/bp1_2024-25.pdf (see p79)



8. The government has not demonstrated the need for the Territory Coordinator legislation

The premise for this legislation appears to be that it is essential to reduce barriers to business investment. While compliance and statutory processes may be inconvenient, no compelling evidence was presented during consultation that there are prohibitive barriers to investment.

NT consistently benchmarks internationally as one of the best jurisdictions for mining[3] . More broadly the Territory is a resource rich and has a stable government, which for decades has invested in “resources exploration” thereby de-risking investments. Furthermore royalties are quite low and unlike much of Australia the territory generally does not require water users to pay for water use.

9. Central Australian case studies

From my experience in water management in the Northern Territory I raise concerns with two examples related to groundwater in the arid zone in areas where it sustains vital ecosystems and cultural values

1. Ti Tree Water Control District

[3] https://smallcaps.com.au/mining-survey-reveals-top-20-global-jurisdictions-fraser-institute/

The first consultation paper specifically mentioned a “Ti Tree horticultural zone”. However, the Ti Tree Water Control District is essentially fully allocated. This was determined during an extensive consultation process in developing the current water allocation plan. The remaining allocations are reserved for “Aboriginal Economic Development”.

More groundwater extraction means damage to groundwater dependent ecosystems and cultural values which was opposed by the Traditional Owners and Water Advisory Committee. I am concerned that under the new legislation the Minister could declare the Ti-Tree Water Control District area a Territory Development Area allowing the Coordinator to make water extraction licence decisions whether they complied with the WAP or not, ignoring the current community consensus

2. Singleton groundwater extraction licence and other approvals needed

If this proposal proceeds it’s environmental impacts will be immense. It will damage or destroy groundwater dependent sacred sites and ecosystems over a vast area. It remains the subject of a Supreme Court appeal. There is a long way to go. It is still subject to a major environmental impact assessment. It also needs clearing and non-pastoral use permits. Under the bill, the Chief Minister could declare this a Project of Territory Significance enabling the Coordinator to exercise powers such as to step into the shoes of the NT EPA during the Environmental Impact Assessment process or the NT Minister for the Environment at the environmental approval stage. This is an immensely complicated project, one the community of Ali Curung unanimously opposes. The environment and First Nations people must be afforded the full opportunity for justice under the law.

In each case the coordinator or the Minister should not be able to intervene in these cases as they rely upon existing plans, full application of legislation and the public deserve the chance to have a say.

10. Submission on earlier draft

In my letter dated 5 November 2024 (attached) I submitted comments on the early discussion paper which was tabled by the opposition in Parliament. I request that this submission also be considered in NT Government’s response to submissions.

11. Alternative proposal

During the public meetings the Acting Territory Coordinator was at pains to state the intention was not to override laws but to coordinate how they are applied most efficiently. Unfortunately this legislation far overreaches this intent.

I recommend:

- that the current proposal be abandoned for the reasons outlined.
- a new “green paper” be written to encourage discussion and gather feedback on whether the position of Coordinator may hold some value in a far more limited role as ***an***

honest broker acting with no legislative powers whatsoever, who by virtue experience and trust might help ensure processes are well coordinated.

Conclusion

Thank you for considering my objections. I welcome the opportunity to participate in further discussions on this matter.

Sincerely

Adrian Tomlinson

Attachments

1. Submission dated 5 November 2024 on earlier consultation draft (separate file attached)