



Environment Institute
of Australia and
New Zealand Inc.

17/1/2025

Via email to:



Dear Sir/Madam

Re: Feedback to the Territory Coordinator Bill 2024

Thank you for the opportunity to make a submission to the above bill.

The Environment Institute of Australia and New Zealand (EIANZ) represents environmental professionals working in environmental science, land management and related professional services such as cultural heritage, legal, community engagement, social scientists, academics and researchers and non-government organisations.

The broad agenda of EIANZ is to ensure that policy is not only underlined by the principles of sustainability but also that it is practical: it is EIANZ members that will be required to operationalize environmental policy through their roles in undertaking studies and preparing approvals documentation.

The Northern Territory EIANZ Division (EIANZ NT) has a keen interest in environmental policy and legislation development and appreciates the invitation to make a submission. In the last 9 years, EIANZ NT has made 23 submissions to government guidelines, regulations, policies and papers.

General Comments

- As practitioners with decades of experience working in the NT legislative environment, we support action by government to facilitate a coordinated and timely approach to environmental assessment and approvals.
- Our interest is in seeing that the broad range of TC functions (provided in Section 12 of the draft Bill) are effectively resourced and delivered to facilitate efficient processes that support achieving good outcomes for the NT environment and community.

Primary principle of the Act

- Section 8 of the draft Bill requires that when exercising powers the TC must have regard to the primary objective of: *"driving economic prosperity for the Territory."*
- To ensure the objective is consistent with the principles of sustainable development, in particular relating to equitable distribution of benefits from development, we would like to

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see the primary objective reflect consideration for Territory community, not just economic prosperity for the Territory.

- The Guide to the *Territory Coordinator Bill* provides a better objective: 'deliver economic growth for the betterment of Territorians.' (refer page 5 of the guide).
- The primary principle of the Act acknowledges that in some cases, individual pieces of legislation do not provide decision-makers with the remit to give adequate weighting to socio-economic outcomes that a project of significance or Territory development area would bring for the Territory community.
- Most NT legislation (excepting perhaps the *Environment Protection Act 2019*) was enacted many years and decades past and is not designed to be applied to the types or scale of activities associated with a project of significance or a TDA.
- The premise of the primary principle should be to give the TC or Minister the power to make a decision that is in the best interest of the Territory community where the original decision-maker may not be in a position to make such a decision due to the constraints imposed by the regulatory frameworks that are in place.

Functions of the Territory Coordinator

- The TC functions provided in Section 12 of the draft Bill include the following activities that EIANZ NT welcome for their potential to improve development outcomes:
 - Providing a single point of contact for proponents.
 - Facilitating collaboration and coordination between proponents, government, Land Councils and native title holders.
 - Advocating for integrated strategic planning and proper consideration of community impacts and benefits from development.
 - Investigation, planning and implementation of programs of works.
- EIANZ NT supports the use of the TC functions and powers to enact process improvements that:
 - Provide better information and data to support proponents' and environmental practitioners in site selection, project design and impact assessment.
 - Reduce duplication and provide certainty about what is required.
 - Improve coordination and information sharing across government agencies.
 - Provide decision-making agencies with the resources they need conduct regulatory processes in a timely manner.
- If these outcomes are achieved, it stands to reason that we will see better outcomes for proponents, the environment and the community.

Maintaining a robust regulatory framework

- Our support for improved regulatory efficiency is conditional on the TC providing ongoing public assurance that the regulatory process remains robust and affords a high level of protection to the Territory's important environmental, social and cultural values.
- We note that the *Guide to the Territory Coordinator Bill* explicitly states (refer page 5):

- *“This model is designed to maximise opportunities to streamline and coordinate processes, not cut corners. The Territory Coordinator will ensure compliance remains a priority and will work closely with regulatory agencies so that projects meet necessary requirements without unnecessary delays.”*
- Upholding this intent is critical to maintaining public confidence in the regulatory process. We urge that the TC powers are exercised with caution and a high level of due diligence is applied to ensure that any benefit obtained, is not eroded by significant delays and reputational impacts associated with protests and legal challenges.
- Upholding this intent is also critical to ensuring environmental, social and cultural values are adequately protected. We urge that the TC powers are used only for the purpose of improving process, and only where proponents have adequately demonstrated the environmental, social and economic impacts and benefits associated with their project.
- In our experience, many delays in approvals processes occur because proponents do not understand and/or are unable to meet necessary requirements of the regulatory process in their desired timeframes.
- Importantly, the TC functions and powers should never be used to give approval where there is a lack of scientific certainty about how important values may be impacted, or where there is significant opposition from directly affected stakeholders.

Transparency and accountability

- A range of valid concerns are being raised by stakeholder groups and community members about the proposed TC powers.
- This current public consultation process presents an opportunity for the TC to acknowledge and appropriately respond to these concerns before finalizing the Bill.
- We encourage the TC to provide a public summary of comments received, and how these are addressed in the final Bill.
- To ensure transparency and accountability is maintained when exercising the TC powers, we recommend including in the Bill a requirement for the TC to provide timely public reporting, similar to the Statement of Reasons that are provided by the NT EPA for decisions made under the *Environment Protection Act 2019*.
- Public reporting would provide a mechanism for the TC to provide reasons for their decisions supported by information that demonstrates how those decisions are in the best interest of the Territory community and the environment.

Focus areas for the Territory Coordinator

- To justify and support the TC's powers, we would like to see a review of the existing regulatory processes to identify where the most challenges occur, and why.
- Understanding underlying causes of project delays is critical to ensuring the TC focuses effort and resources on processes that have a material impact on projects.

- The review should be made publicly available and include:
 - Analysis of how the NT processes and timelines compare to other jurisdictions
 - A survey of proponent experiences with approvals in the NT aimed at identifying where delays commonly occur.
 - Key issues and solutions identified by responsible agencies.
- We expect a review would identify some focus areas that can justifiably be addressed by exercising the powers in the Bill, and others that will need to be addressed separately. It is important to acknowledge the necessary limitations of the TC Bill and ensure there are plans in place to address the gaps.
- In our experience, some of the most challenging timeframes for proponents are associated with the processes under the *NT Aboriginal Sacred Sites Act 1989* and *Aboriginal Land Act 1978*, and *Cth Native Title Act* and *EPBC Act*, which appropriately are excluded from the Schedule of Acts under the Bill.
- Irrespective of the application of the Bill, EIANZ NT advocates for the TC to support all NT Government agencies and land councils to identify opportunities for process improvements that will have a material benefit in terms of improving outcomes for the NT environment and community.
- The *Guide to the Territory Coordinator Bill* requests feedback on whether the *Heritage Act* should be excluded. EIANZ NT support exclusion of the *Heritage Act*. The processes under the Act are well defined and rarely cause significant project delays.

Improvements to existing regulatory processes

- The above-mentioned review could also be used to identify issues that may be better addressed by making amendments to subordinate legislation (as an alternative to exercising powers in the TC Bill).
- It is our experience that delays mostly occur with processes that do not have statutory timeframes. While the *Environment Protection Act 2019* has statutory decision-making timeframes associated with most steps in the process, many pieces of sub-ordinate legislation do not.
- Proponents and environmental practitioners experience frustration with processes associated with Land Clearing Permits, Non-Pastoral Use Permits, Water Licenses and Environmental Protection Approvals & Licences for example, which can have extended timeframes that don't seem justifiable when a detailed level of study and assessment has already occurred through the *Environment Protection Act 2019*.
- EIANZ NT advocates for addressing issues with the existing regulatory framework and adequately resourcing government departments, so that responsible decision-makers can be empowered to make sound and timely decisions, thus minimising the need for the TC to exercise powers that could undermine public support and trigger legal challenges.

Part 4 Territory Development Areas and Plans

- EIANZ NT supports the concept of Territory Development Areas (TDA's) and Territory Development Plans (TDP's) as a more strategic approach to development that has potential to facilitate better outcomes for the NT environment and community.

Part 5 Division 2 Requests

- Decision requests from the TC would need to be accompanied by appropriate resourcing that enables the responsible agency to comply.
- As stated above; to justify and support the use of the TC powers, it is important to first understand the underlying causes of delays and poor project outcomes and take action to address those causes.
- In our experience key causes of protracted approval timeframes in the NT include:
 - Poor site selection and design, and inadequate stakeholder engagement by Proponents.
 - Increasingly complex proposals for new and emerging industries that have not previously been assessed.
 - Poorly defined and changing expectations of regulators.
 - Lack of statutory timeframes attached to regulatory processes.
 - Inadequate resourcing and a shortage of qualified and skilled practitioners in government agencies.
- It is our strong preference that the TC provide advocacy and support for these issues be addressed, which should reduce the need to issue requests.

Part 5 Division 3 Notices

- The step-in and exemption notice powers do leave us with some concerns, mainly in relation to their application to projects assessed under the *Environment Protection Act 2019*. The application of the TC powers to the *Environment Protection Act 2019* is likely to create most concern from stakeholders and the community.
- We recommend that the TC consider removing the *Environment Protection Act 2019* as one of the Scheduled Acts under the Bill. We believe the gains that can be achieved, in terms of reducing approval timeframes, are likely to be immaterial (i.e. a few weeks to months) and do not justify undermining community confidence in this primary piece of legislation.
- We also question the appropriateness of the TC (part of the Dept of Chief Minister), taking over decision-making power from the independent NT EPA Board. The Board is highly skilled and experienced, which positions them to make trusted decisions on complex proposals.
- Finally, as most significant projects and TDA's would likely trigger assessment under the *EPBC Act*, the TC powers would not apply. In this case, step-in and exemption notices are likely to have limited application to significant projects and TDA's.

- Given the community concern and high likelihood of legal challenges associated with these powers, removing the *Environment Protection Act 2019* from the list of the Scheduled Acts under the Bill, should be considered.
- Based on the examples provided in the Guide to the *Territory Coordinator Bill* we can see potential for these powers to be used to address duplicative processes where proposals have been subject to assessment under the *Environment Protection Act 2019* but also require approval under several pieces of sub-ordinate legislation. However, as stated earlier, it is our strong preference that consideration first be given to addressing issues with existing regulatory processes, to minimise the need to exercise TC powers.

Closing

We appreciate the opportunity to make this submission and would welcome further engagement as the Bill and supporting materials are developed. If you wish to discuss this submission or the Bill, please do not hesitate to conduct me.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'JR', with a long horizontal line extending to the right.

JEFF RICHARDSON,

President,

Northern Territory Division

