

Statement of Consistency

Bill No. 3-20(1)

Carbon Tax Repeal Act

Private Member's Public Bill

Sponsoring Member: Mr. Kieron Testart, MLA for Range Lake

Explanatory Note

The [United Nations Declaration on the Rights of Indigenous Peoples Implementation Act¹](#) (*UNDRIP Implementation Act*) came into force on October 6, 2023.

Subject to certain exceptions, section 8(2) of the *UNDRIP Implementation Act* requires the sponsor of a private member's bill, before second reading, to “table a Statement of Consistency prepared by the Law Clerk of the Legislative Assembly indicating whether or not, in their opinion, the bill is consistent with the Declaration² and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.” [Section 35\(1\)](#) of the *Constitution Act, 1982* provides “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

A Statement of Consistency helps inform public and Legislative debate on a bill. The requirement for one appears in the *UNDRIP Implementation Act* under the heading “Consistency of Laws with Declaration”, which includes section 6(1): “The Government of the Northwest Territories shall, in collaboration and cooperation with Indigenous peoples, take all reasonable measures to ensure that the laws of the Northwest Territories are consistent with the Declaration”. While a private member is not the Government, section 6 and the Act as a whole inform the Statement of Consistency.

The Statement of Consistency is not a comprehensive analysis of all conceivable inconsistencies of a bill with the Declaration and section 35 of the *Constitution Act, 1982*. The bill may be amended after second reading as it passes through Committee and the House. And it is the Assembly as a whole, not the Member acting individually or the Government, that may enact the bill into law. Through representatives elected to this Assembly, Indigenous peoples and Indigenous Governments or Organizations have an opportunity to participate in that legislative process. Additional considerations relevant to

¹ SNWT 2023, c. 36.

² As defined in the Act, “Declaration” means the *United Nations Declaration on the Rights of Indigenous Peoples* set out in the Schedule to the Act.

the consistency of a bill with the Declaration or section 35 rights may arise during that process.

Analysis of the bill

The bill repeals several amendments made in 2019 by [An Act to Amend the Petroleum Products Tax Act](#).³ This would result in the [Petroleum Products and Carbon Tax Act](#)⁴ largely going back to the way it read before the 2019 amendments.

The 2019 amendments gave the Government of Northwest Territories the ability to impose a carbon tax on certain petroleum products and natural gas, at a rate set out in the Schedule to the Act. The carbon tax does not apply to petroleum products or natural gas delivered to or purchased by “an Indian or Indian band on a reserve”,⁵ though this has limited application in the Northwest Territories as there are very few reserves.

It is not possible to draw any conclusions about the effect of the carbon tax on reducing greenhouse gas emissions in the Northwest Territories,⁶ or any effects that might flow from that. Accordingly, the loss of the ability to impose a carbon tax at the rates in the existing legislation could not, on its own, impact any rights under the Declaration or section 35 of the *Constitution Act*.

Statement of Consistency

The Law Clerk has reviewed the bill for consistency with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*, as per section 8(2) of the *UNDRIP Implementation Act*. This review involved consideration of the context and words of the bill and the Act it would amend, as well as the context, object and intention of the *UNDRIP Implementation Act* itself.

In the Law Clerk’s opinion, the bill is consistent with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

LAW CLERK
Toby Kruger

February 23, 2024

³ SNWT 2019, c. 25.

⁴ RSNWT 1988, c. P-5.

⁵ *Ibid.* at section 2.1(4).

⁶ Government of Northwest Territories, Department of Finance, “Carbon Tax” (last accessed February 16, 2024) online: <<https://www.fin.gov.nt.ca/en/services/carbon-tax>>.