



STATEMENT OF CONSISTENCY

Bill 22: Legislation Act

Sponsoring Minister: R.J. Simpson

Explanatory Note

Subsection 6(1) of the *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, SNWT 2023, c. 36 (“*UNDRIP Implementation Act*”) requires the Government of the Northwest Territories (“GNWT”), in collaboration and cooperation with Indigenous peoples, to take all reasonable measures to ensure the laws of the Northwest Territories (“NWT”) are consistent with the Declaration set out in the Schedule of the *UNDRIP Implementation Act*.

Subsection 8(1) of the *UNDRIP Implementation Act* requires the Attorney General to prepare a Statement of Consistency on behalf of the sponsoring Minister of a bill, indicating whether or not the bill is consistent with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. The sponsoring Minister must table the Statement of Consistency before the second reading of the bill in the Legislative Assembly.

A Statement of Consistency is not required if an exception under subsection 8(3) of the *UNDRIP Implementation Act* applies.

A Statement of Consistency provides legal information to the Legislative Assembly about the bill’s potential impacts on rights of Indigenous peoples set out in the Declaration and the potential impacts on rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. It is not intended to be a comprehensive overview of all conceivable inconsistencies with Indigenous and Aboriginal rights. A bill may see several amendments between second reading and its ultimate passage through the Legislative Assembly. Additional considerations relevant to the consistency of a bill with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may arise through that process. A Statement of Consistency will not reflect an analysis of those changes.

Background

Primary legislation is created by passing bills through the legislative branch of government. Regulations are delegated legislation that are created under the authority of the primary legislation. Regulations are made by the executive branch of government rather than by the



Legislature. The territorial regulatory process is the process that the Legislature has imposed to oversee the exercise of delegated legislation.

The current framework for this process is set out in the *Statutory Instruments Act* and is supplemented by various other legislation, including regulations made under that Act, the *Interpretation Act* and the *Public Printing Act*.

The territorial *Statutory Instruments Act* was first enacted in 1971, under the name *An Ordinance to Provide for the Registration and Publication of Regulations*. The definition of “statutory instrument” in the territorial Act is very similar to the definition of “statutory instrument” in the federal *Statutory Instruments Act* and has remained largely unchanged since the territorial Act was first enacted. The definition has been described as “one of the most complicated definitions in statute law”,¹ making it difficult to apply in practice.

The NWT and the federal jurisdiction are the only two jurisdictions in Canada that still have a *Statutory Instruments Act*. Apart from Prince Edward Island, the provinces and other territories have all moved to modernized legislation for the procedures governing regulations.

Most jurisdictions have also modernized certain areas of their approach to making primary legislation. Five jurisdictions in Canada - Manitoba, Newfoundland and Labrador, Nunavut, Ontario and Saskatchewan - have taken a combined approach, whereby provisions related to the making of statutes are also included in the statute that sets out the regulatory process. The trend in Canada is moving toward this combined approach.

Purpose of the Bill

The purpose of the Bill is to follow the trend in Canada by replacing the *Statutory Instruments Act* with a more modern *Legislation Act*, that clearly sets out the territorial regulatory process, as well as provisions related to the making of statutes.

Key Aspects of the Bill Explained

1. Chief Legislative Counsel

The Bill creates the office of the Chief Legislative Counsel and sets out powers and duties for that office. The Chief Legislative Counsel will implement procedures set out in the Bill, such as assigning chapter numbers to Acts, consolidating enactments and fixing minor errors in enactments.

¹ Paul Salembier, *Regulatory Law and Practice in Canada*, LexisNexis Canada Inc. 2004, Markham ON, at p.23.



2. Registrar of Regulations

The Bill carries over the office of the Registrar of Regulations and sets out powers and duties for that office. The *Statutory Instruments Act* includes a Registrar of Regulations. Under that Act, all regulations must go through a Registrar’s review before they are made. The Bill carries over and clarifies the existing obligations of the Registrar. It also gives the Registrar new correction powers for fixing minor errors in regulations.

3. Solicitor-Client Privilege and Provision of Drafting Services

The Bill clarifies that information related to legislative drafting is solicitor-client privileged. It also provides that legislative counsel can provide drafting services to multiple clients, including the GNWT, the Legislative Assembly and the Courts, without risking running afoul of rules relating to conflicts of interest or duties of loyalty.

4. Definition of “Regulation”

The Bill clarifies the types of instruments that are subject to the regulatory process by creating a simplified definition of “regulation” and eliminating the definition of “statutory instrument”. It sets out clear processes for instruments that meet the definition of “regulation”. It also allows processes for other types of instruments to be set out in delegated legislation.

5. Interpretation Act

The Bill moves certain rules specific to the application and effect of legislation, and the coming into force and repeal of enactments, out of the *Interpretation Act* and into the *Legislation Act*. The Bill also amends the *Interpretation Act* to:

- allow regulations to incorporate documents by reference; and
- modernize the use of forms.

6. The Making of Acts

The Bill sets out rules related to the making of Acts, including in respect of:

- enacting clauses;
- publication of Acts;
- corrections to Acts;
- citation of Acts; and
- the Legislative Assembly’s power to repeal or amend Acts.

The Bill ensures that procedures related to the making of Acts are consistent and have suitable legal backing. It also adds new correction powers to fix minor errors in Acts.



7. Territorial Regulatory Process

The Bill updates and modernizes the territorial regulatory process, including with respect to:

- examination of proposed regulations;
- filing and registration of regulations;
- publication of regulations; and
- corrections to regulations.

This process currently exists, but the Bill updates and modernizes it. The Bill also adds new correction powers to fix minor errors in regulations.

8. Consolidation of Enactments

The Bill sets out rules with respect to the consolidation of Acts and regulations, including:

- preparation and publication of consolidated legislation; and
- editorial changes and corrections to consolidated legislation.

Consolidations of legislation are presently only created for convenience. The Bill allows for consolidations to become official copies of law. This enhances digital accessibility, as consolidations are the most accessible and accessed format of legislation.

9. Revisions of Enactments

The Bill repeals the *Statute Revision Act* and set out rules with respect to the revision of enactments, including in respect of:

- preparation of revisions;
- approval and coming into force of revised enactments;
- registration of revised regulations; and
- publication of revised enactments.

A revision is a re-publication of an existing law with changes such as renumbering, correcting grammar and spelling, and modernizing language. A revision does not change a law's legal effect. The *Statute Revision Act* model contemplates a total revision of the entire statute book, a resource-intensive process that has not been conducted since 1988. The Bill allows for the revision of legislation in smaller batches, so that revision work can happen over time and as resources allow.

10. Territorial Printer Act

The Bill replaces the *Public Printing Act*, which authorizes the publication of the *Northwest Territories Gazette* and provides for the appointment of the Territorial Printer, with the *Territorial Printer Act*, which aligns more closely with current practice by reflecting



appointment by the Minister, additional duties such as web maintenance, and the ability for the Chief Legislative Counsel to issue directions on certain matters.

11. Consequential Amendments

The Bill makes consequential and clarifying amendments to the *Interpretation Act* and other statutes as required.

Application

The Bill should be considered legislation of general application as it does not apply specifically to any Indigenous Government or Organization in the NWT, nor any lands, waters or resources identified and set out in a land, resources or self-government agreement based in the NWT.

Impacts on Rights under the Declaration and Section 35 Aboriginal and Treaty Rights

This Bill does not impact rights under the Declaration, such as the right to self-determination and self-government, rights respecting lands, territories or resources, or environmental, economic, health, cultural, religious, language or other rights, nor does it impact Aboriginal and treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

The Bill carries over the requirement in paragraph 2(3)(b.1) of the *Statutory Instruments Act* that requires the Registrar of Regulations to examine proposed regulations to ensure that they are consistent with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

The focus of the Bill is the establishment of technical requirements and processes that apply to legislation after it has been drafted, including related to consolidating, publishing and citing Acts and regulations, filing and registering regulations, and making minor corrections to Acts and regulations that do not change their legal effect. The Bill does not set out processes for the development of legislation – that is beyond its scope. The Bill has no impact on established mechanisms to engage Indigenous Governments and Indigenous Organizations in the legislative process, such as the *Intergovernmental Council on Land and Resources Management: Legislative Development Protocol*, which is not affected by the Bill.

One of the key matters addressed in the Bill is to clarify the types of instruments that are subject to the regulatory process, including by creating a simplified definition of “regulation” and eliminating the definition “statutory instrument”. Instruments that are caught by the definition of “regulation” will need to be examined by and registered with the Registrar of Regulations, similar to the current requirements under the *Statutory Instruments Act*.



A “regulation” under the Bill includes:

- subordinate legislation where the provision conferring the power to enact it uses the word “regulation” or “prescribe”, or another grammatical form of either word, in conferring the power;
- subordinate legislation that is made under an Act that states that the *Legislation Act* applies to it or that it is a regulation within the meaning of or for the purposes of the *Legislation Act*; and
- subordinate legislation that is set out in Part 1 of Schedule B to the *Legislation Act*.

Under the *Statutory Instruments Act*, the current definition of “regulation” also includes certain types of orders. The Bill includes consequential amendments that add one of the “trigger words” (i.e. “regulation” or “prescribed”) to the enabling provisions for orders that should continue to be registered as regulations under the new *Legislation Act*. Adding these trigger words will ensure the orders are caught by the new definition of “regulation”. The consequential amendments include minor amendments to the following statutes related to lands and resources management or to Indigenous Governments or Organizations:

- *Commissioner’s Land Act*;
- *Déline Final Self-Government Agreement Act*;
- *Forest Act*;
- *Forest Protection Act*;
- *Northwest Territories Intergovernmental Agreement on Lands and Resources Management Act*;
- *Northwest Territories Lands Act*;
- *Mineral Resources Act*;
- *Oil and Gas Operations Act*;
- *Petroleum Resources Act*;
- *Protected Areas Act*;
- *Public Land Act*;
- *Species at Risk (NWT) Act*;
- *Surface Rights Board Act*;
- *Tłı̨chų Community Government Act*;
- *Tłı̨chų Community Services Agency Act*;
- *Waters Act*;
- *Wildlife Act*.

Under section 9.5 of the *Tłı̨chų Intergovernmental Services Agreement* and section 2.11.1 of the *Tłı̨chų Agreement*, the GNWT is required to consult the Tłı̨chų Government in the preparation of amendments to the *Tłı̨chų Community Government Act* or the *Tłı̨chų Community Services Agency Act*. Under paragraph 2.5.2(b) of the *Déline Final Self-Government Agreement*, the GNWT is required to consult the *Déline Got’ınę Government* in



the preparation of amendments to the *Délyne Final Self-Government Agreement Act*. The GNWT consulted with these Indigenous Governments on the proposed consequential amendments. The GNWT also engaged with the Intergovernmental Council of the Northwest Territories on the proposed changes.

UNDRIP Statement of Consistency

The Attorney General has examined the Bill for any inconsistencies pursuant to the obligation under subsection 8(1) of the *UNDRIP Implementation Act*. This review involved consideration of the context in which the Bill was created, as well as the text of the Bill.

In reviewing the Bill, the Attorney General is of the opinion that the Bill is consistent with the Declaration and section 35 of the *Constitution Act, 1982*.