



STATEMENT OF CONSISTENCY

Bill 34: *Trespass to Property Act*

Sponsoring Minister: Jay Macdonald

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

The *Trespass to Property Act* (the “Bill”) was developed to respond to a legislative gap that was identified, to provide property owners and lawful occupiers with the tools necessary to deal with persons who trespass on their property. The GNWT committed, as part of the 20th Assembly mandate, to establishing legislation governing trespass on private property, and has received significant public support in favour of creating a unified regime to govern trespassing as there is in most provinces.

Purpose

The purpose of this Bill, as set out in the Bill, is to establish trespassing as an offence, establish a consistent system for owners and lawful occupiers to indicate that entry to their property is prohibited except where authorized by law, and enable owners and lawful occupiers to seek compensation for damages they have suffered from trespassing.

Application

The Bill applies equally to all residents of the NWT. This Bill should be considered legislation of general application as it does not apply specifically to any Indigenous government or organization in the NWT, nor to 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*.

Though this Bill does not directly impact Indigenous or Treaty Rights, it contains language to ensure that priority is given to Indigenous or Treaty Rights should there be any incidental impacts. It includes non-derogation clauses, providing that the Act must be interpreted in a manner consistent with the recognition and affirmation of aboriginal and treaty rights, recognizes the roles of boards or councils established under land, resources, and self-government agreements, and provides that, should there be a conflict with any land, resources, or self-government agreement, that agreement shall prevail.



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*.