

Intergovernmental Council on Land and Resource Management: Legislative Development Protocol

Background & Purpose

The *Northwest Territories Intergovernmental Agreement on Lands and Resources Management* (“IGA”) formalizes government-to-government relationships and allows for the further development of agreements or other arrangements among the Parties for cooperative and coordinated management of lands and resources, recognizing the rights, titles, jurisdiction, and authority of each Party. The engagement and collaboration required under the IGA is operationalized through the Intergovernmental Council (“IGC”) and any subgroups mandated by the IGC.

The IGA recognizes that the management of lands and resources in the Northwest Territories is fundamentally important to the people of the Northwest Territories and should be managed: (i) in accordance with settlement and self-government agreements and in keeping with the honour of the Crown; (ii) under a system of policies and legislation that reflects regional and Indigenous Parties’ approaches to decision-making; and (iii) in an integrated, cooperative, and coordinated manner.

The above principles are critical to the success of any legislative initiatives developed through this process, and are express commitments in the IGA. The IGA provides that the Parties will “review and develop ... any associated legislative, policy or organizational changes that are necessary to further the purpose and objectives” of the IGA and “any proposed changes to the legislation that the GNWT is required to substantially mirror on the Transfer Date pursuant to the Devolution Agreement, including the development of new resource management legislation.”

In developing new resource management legislation (including regulations and amendments to existing legislation) pursuant to the IGA, IGC members recognize that it is necessary for them to work collaboratively to identify legislative priorities and to collaboratively develop legislation, including regulations, with respect to the management of lands and resources in the Northwest Territories in a spirit of consensus.

The Parties have further agreed that it is appropriate and desirable to establish a process whereby each Indigenous government organization (“IGO”) that is an IGC member will notify other IGC members when they intend to proceed with the introduction or amendment of any IGO laws related to the Management of Lands and Resources. If appropriate, this notification would allow for cooperative engagement, in a non-prescriptive manner, that would not diminish the authorities of the IGO IGC member.

Collaboration and Consensus

Consistent with the commitments in the IGA, and building on the successful legislative collaborative development processes undertaken to date—which the parties acknowledge is a progressive and forward-looking step in the development of Northwest Territories legislation—

the shared objective of all IGC members is to collaboratively and consensually develop, draft, and amend well-informed, balanced NWT legislation, including regulations, and associated policy guidance, educational or support materials, and/or other related documents or instruments¹ that are consistent with the general requirements and intent of resource management legislation while respecting asserted and established Aboriginal and/or Treaty rights and modern lands, resources, and self-government agreements.

Collaborative legislative development should, to the greatest extent possible, operate on the basis of consensus and through good faith, interest-based discussions and negotiations. It should include the fair and meaningful opportunity for all parties to fully engage with all relevant aspects of the development process, including the consideration of divergent views, and acknowledge that consensus does not require unanimity where there is otherwise broad agreement.

The process described below sets out the hallmarks of collaborative development and is applicable to the development of all NWT legislation (statutes and regulations), related to the management of lands and resources in the Northwest Territories. When legislation is developed pursuant to the process described below, that legislation will be understood to have been collaboratively developed among GNWT and those IGOs who are IGC members and who choose to participate (“Participating IGOs”).

The Collaborative Development Process for NWT Land and Resource Legislation

A. GNWT Invitation to Participate

The initial step in the process is for the GNWT to invite all IGC members to participate in developing the substance of a legislative proposal for the creation or amendment of any **NWT statute, or a process for the development or amendment of regulations, related to the “Management of Lands and Resources,”** as defined in section 1.1 of the IGA. This step should be taken as early as possible in the process.

B. IGOs Determine Level of Engagement

Each **IGC member will determine** if it wishes to be involved in the collaborative development of a particular piece of legislation and, if so, the **level of engagement** it considers appropriate in the circumstances. It is up to each IGC member to determine their desired level of engagement in the process.²

¹ For greater certainty, “other related documents or instruments” shall not be construed so as to include regional or context-specific orders-in-executive-council that are not of general concern to IGC members across the Northwest Territories, unless IGC members agree otherwise.

² For greater certainty, while one single process will be used for IGC engagement on any particular legislative initiative, it is also understood that in certain instances only a subset of IGC members—based

The Intergovernmental Council Secretariat (“IGCS”) will discuss the collective participation of its membership in the collaborative development process, including sharing preliminary views on timelines and capacity.

IGC responses to the GNWT invitation to participate will be communicated through the IGCS and will largely determine the level of engagement that a particular legislative initiative will require. Depending on the nature of the legislation and the nature of the engagement requested by IGC members, the resulting engagement process will vary for each legislative initiative. IGOs will consider the level of involvement they wish to have in the proposed legislative development process, taking account of, among other considerations relevant to a particular IGO, the following factors:

- relevance of the proposed legislation to the IGO’s priorities, interests, and rights;
- potential adverse impacts to asserted or established Aboriginal and/or Treaty rights of the IGO; and
- scope and volume of work relative to anticipated capacity of the IGO.

Based on the above factors and other considerations relevant to each IGO, varying levels of IGO engagement will be appropriate for different legislation, and different IGOs may elect to have differing levels of engagement in the collaborative development of a particular piece of legislation as a result of differing interests, rights, priorities, or capacity constraints that the IGO might identify. Some legislative initiatives will involve all IGOs, other legislative initiatives may only involve a subset of IGOs, and it may also be the case that all IGOs will agree that for minor changes to statutes or administrative amendments to regulations, no further engagement is required.

Where IGC members are invited to participate in a legislative initiative that was commenced—but not completed—in a previous Legislative Assembly, the IGC members shall collectively determine at what stage in the process set forth below it is appropriate to recommence engagement.

Unless otherwise agreed, information and/or documents shared by participating IGC members through the collaborative development process for NWT legislation that is described herein are confidential and will not be further disclosed without the consent of the party that shared the information and/or documents.

on geographic/regional or subject-matter specific concerns—will elect to be involved in a particular legislative initiative. The desire of only a sub-set of IGC members to participate in the process set forth herein shall not be a reason for this protocol not to be utilized.

C. Engagement Assessment and Planning

Based on responses to the invitation to participate and the determination by each IGO of their intended level of involvement, the GNWT and IGOs who intend to participate in a particular legislative initiative will develop a workplan and timeline for the subsequent steps in the process. This workplan and timeline will enable each IGC member to allocate time and resources to the process. The IGCS will share this workplan with all IGC members. Work planning will also include documenting initiatives where IGO members requested very little to no engagement. The workplan may include, but is not limited to, research, a discussion paper, a “what we heard” report, and development of policy considerations. Where appropriate, the IGCS will also discuss the potential involvement of other groups and/or agencies, such as non-IGC IGOs, co-management bodies created pursuant to land claim agreements and/or under the *Mackenzie Valley Resource Management Act*—in all or part of the collaborative development process.

D. Legislative Proposal and Regulation Development

- GNWT will develop and share the substance of a legislative proposal or proposed approach to regulation development based on preliminary discussions among all participating IGC members.
- Participating IGOs will review the substance of the legislative proposal or proposed approach to regulation development and provide comments, amendments, and other changes for consideration.
- A final legislative proposal or proposed approach to regulation development that reflects the needs and interests of the Participating IGOs will be sent to the relevant GNWT minister(s) for consideration in accordance with the honour of the Crown.

E. Establishment of Technical Working Group

- The IGCS will determine when a technical working group is required for the collaborative development process. Where established, the technical working group will be composed of officials appointed by the GNWT and Participating IGOs and coordinated in collaboration with the IGCS. The technical working group will be comprised of persons duly authorized to represent their respective principals in order to support the collaborative development process.
- With the advice of the IGCS, the GNWT may retain a facilitator to support the development of drafting instructions in accordance with the approved legislative proposal or proposed approach to regulation development, and in collaboration with the Participating IGC IGOs.
- The tasks of the technical working group will include collaboratively:
 - developing recommendations and options for discussion;

- developing technical and subject matter expert opinions on policy intentions and topics to be addressed in statutes, regulations, or other instruments;
 - soliciting the views and concerns of non-IGC IGOs and, where necessary, co-management boards, non-governmental organizations, and other stakeholder agencies as a component of the drafting process;
 - developing proposed statutes, regulations, legislative amendments, policy guidance, educational or support materials, and/or other related documents or instruments;
 - supporting the development of policy to be reflected in drafting instructions and reviewing legislative drafts;
 - when requested and to the extent possible, engaging with legislative drafters respecting the content of draft statutes, regulations, and/or amendments as required, while acknowledging that the legislating government retains the jurisdictional responsibility to provide final drafting instructions;
 - reviewing final legislative drafts and policy guidance materials prior to review by Northwest Territories Legislative Assembly Committees; and
 - as required, communicating and engaging with GNWT ministers and/or officials through the IGC when consideration is being given to changes proposed during the Standing Committee review process, in a manner consistent with available timelines.
- Responsibilities of technical working group members include:
 - providing knowledge, advice, and guidance to support the development of the drafting instructions;
 - reviewing, considering, and providing feedback and advice on priority issues, concepts, and briefing papers provided for review in a timely manner;
 - identifying and seeking ways to resolve potential issues and challenges;
 - sharing knowledge and expertise with respect to key and priority issues impacting matters that are being considered;
 - designating appropriate personnel resources from their government or organization to participate in the technical working group as needed; and
 - reporting to their respective government or organization on the activities of the technical working group.
 - Responsibilities of the facilitator will include:

- providing meeting minutes, including action items, to all technical working group participants for their review and approval;
- providing guidance and support to advance the development of the drafting instructions;
- facilitate the development of working consensus among the technical working group; and
- other tasks as determined by the technical working group.

F. Collaborative Development of Draft Legislation

The objective of collaborative development is to enable the IGC members to reach consensus on draft legislation. This stage will necessarily require collaboration between GNWT and Participating IGO officials through the technical working group, and a structured, iterative dialogue between the technical working group and legislative drafters to achieve consensus on final draft legislative text. To that end, the collaborative development process will require:

- Technical working group members to work cooperatively, diligently, and respectfully.
- All work products to be prepared through collaborative development and all key decisions to be made by consensus, and in an appropriately timely manner that considers timeframes for passage of the legislation in question.
- If technical working group members are unable to reach consensus on a significant issue, the facilitator or any Party may require a meeting of the IGCS on reasonable notice. The technical working group will be bound by any direction from the IGCS to resolve the issue.
- If specific IGC members have concerns that are not reflected in the broader consensus achieved by the group, mechanisms to identify those concerns as the legislation proceeds can be identified.

G. IGC Review

The final stage of the collaborative development process is formal review by the IGCS. The draft legislation will be reviewed at an IGCS meeting, with a view to achieving final consensus on any outstanding matters prior to submission to the Minister to bring forward to the Assembly or the Commissioner in Executive Council, as appropriate to the legislation under consideration.

IGO Legislation Notification Process

The following notification process will be used by IGO IGC members with respect to IGO laws related to the Management of Lands and Resources:

- 1) An IGO will notify the IGCS Coordinator in writing when it decides to proceed with the introduction or amendment of any IGO laws related to the Management of Lands and Resources.
- 2) Upon receipt of a written notification referred to in 1), the IGCS Coordinator will circulate it to all IGC members.
- 3) Where an IGO holds jurisdiction over lands, waters, and resources that are not within Settlement Lands as defined within the Intergovernmental Agreement, the obligation to notify in 1) shall be commensurate with the jurisdictions and authorities of that IGO.
- 4) Nothing herein precludes any IGC members from entering into an agreement or other arrangement regarding the Management of Lands and Resources.

Conclusion

The above process builds on the experiences and best practices in collaboratively developing legislation between the IGOs and the GNWT, further formalizes government-to-government relationships through the IGC, and enables the IGC parties to better achieve the cooperative and coordinated management of lands and resources contemplated under the Devolution Agreement.

It is in the interest of all of the IGC members to build on the unique strengths of the intergovernmental relationships in the Northwest Territories, and to work together to maximize the benefits that can result from collaboratively developing legislation to guide the careful stewardship and responsible development of natural resources in the Northwest Territories.