



Environmental Defenders Office

4 April 2025

Committee Secretary
Legislative Scrutiny Committee
Legislative Assembly of the Northern Territory

By email: LA.Committees@nt.gov.au

Dear Committee Secretary,

Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Legislative Scrutiny Committee (**the Committee**) on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill (**the Bill**).

EDO makes the following comments having regard to the functions of the Committee as prescribed by Sessional Order 14(3) of the Legislative Assembly.

EDO submits the Bill should be withdrawn and appropriate consultation should occur at the direction of First Nations communities, to ensure that the proposed changes are not progressed without their free, prior and informed consent. In the alternative, the Committee should exercise its powers to facilitate a more effective and meaningful inquiry process.

Introduction

EDO is a non-Indigenous community legal centre which has represented First Nations communities around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

Out of respect for First Nations self-determination, EDO provides high-level comments in relation to the Bill to empower First Nations to protect their Countries and cultural heritage.

Insufficient regard to the rights and liberties of individuals¹

The Bill proposes a number of significant changes to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (**the Act**); legislation designed to protect sacred sites on all land in the Northern Territory and whose stated aim is to:

¹ Terms of Reference, section (3)(b)(iii).

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preserve and enhance Aboriginal cultural tradition in relation to certain land in the Territory and the aspirations of the Aboriginal and all other peoples of the Territory for their economic, cultural and social advancement.

Such significant reforms, which include provisions dealing with termination of membership of Aboriginal members of the Authority, the transfer of Authority certificates to other proponents and a new scheme for enforceable undertakings, should be subject to full and careful scrutiny to avoid the risk of undermining the existing protections provided by the Act and other inadvertent consequences. Moreover, any reform of the Act should take place on the basis of the free, prior and informed consent of First Nations communities across the Northern Territory, consistent with Article 19 of the United Nations Declaration on the Rights of Indigenous People which provides:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

There is no apparent justification for the haste of the Bill and this Inquiry.

Transfer of certificate

If enacted, the Bill would introduce a new power to allow for certificates of the Aboriginal Areas Protection Authority (**AAPA**) to be transferred for the same area of land and work.² The Explanatory Statement to the Bill states that these transfers are “administrative in nature only”³ and will “increase process efficiencies”⁴ as consultation has already been undertaken in respect of the same area of land and work where an Authority Certificate has previously been issued.

We disagree.

EDO acknowledges the concerns raised during a public briefing to the Committee on 1 April 2025 by Dr Benedict Scambury, the Chief Executive Officer of the AAPA. During the briefing Dr Scambury explained that while transferring certificates may be uncontroversial in most cases, there are circumstances where consultation may be required due to a change in custodians (based on a significant passing of time), the viewpoint of those custodians regarding the land, and the viewpoint or past experience with the proposed new company.

EDO is particularly concerned the proposed section 24A does not include any timeframe or requirement for reconsideration. In this regard, authority certificates could be transferred indefinitely. Nor does the Bill provide for notice of the transfer to relevant custodians.

The transfer of Authority certificates in these circumstances is not purely administrative. The potential to remove or undermine current consultation requirements, thereby undermining the

² *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025*, cl 7.

³ Explanatory Statement, *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025*, p 2.

⁴ *Ibid*, p 2.

important protections of sacred sites, demonstrates the Bill does not have sufficient regard to Aboriginal and Torres Strait Islander tradition.⁵

Moreover, the new provision does not reflect the principle that First Nations must give their free, prior, informed, and *ongoing* consent in relation to decisions that impact their heritage, consistent with Australia's international obligations and the UN Declaration on the Rights of Indigenous Peoples (Article 19).

The Committee should recommend this section be removed, or in the alternative, significantly amended to ensure the fundamental objectives of the Act to protect sites is not watered down.

Inadequate public consultation

We are deeply concerned about the absence of public consultation on the Bill prior to its introduction in the Legislative Assembly. The Bill was referred to the current Inquiry on 27 March 2025, with a call for submissions by 4 April 2025 – the following week. Such a truncated period for submission and inquiry is patently ineffective to enable meaningful consultation on significant reforms. As noted above, there is no apparent justification for this timetable.

The Act has not been amended since it came into effect in 1989. Reforms to modernise and strengthen protection of cultural heritage in the NT are long overdue. Tabling the Bill without prior consultation with key stakeholders and community members is a missed opportunity to hear from stakeholders who are directly impacted by the Bill. In particular, the Government should engage with key stakeholders and community members to discuss the recommendations of PwC's 2016 Sacred Sites Processes and Outcomes Review⁶ with a view to jointly progressing reforms to modernise the Act.

The lack of effective public consultation and, in particular, consultation or engagement with regional and remote First Nations communities, is of particular concern.

The Committee now has an opportunity to improve the level of public engagement on this Bill and ensure a more widespread and fulsome consultation process⁷ and facilitate the full ventilation of issues raised by the Bill, including by convening a public hearing held in accordance with Standing Order 189(1). This would provide members of the public who have not been heard with an opportunity to participate and voice their opinions.

EDO suggests the Committee seek the advice of the 4 Land Councils in the Northern Territory regarding whether public hearing(s) is desired, and in what location, format and timeframe would be appropriate.

Thank you again for the opportunity to comment on the Bill. Please do not hesitate to contact us on first.nations.program@edo.org.au should you have further enquiries.

⁵ Terms of Reference, section (3)(b)(iii)(J).

⁶ PwC Indigenous Consulting (26 April 2016) Sacred Sites Processes and Outcomes Review.

Yours sincerely,

Environmental Defenders Office



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Harriet Ketley
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