

Submission by Larrakia Nation Aboriginal Corporation Opposing the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23)

To: Northern Territory Government
Secretary, Legislative Scrutiny Committee,
GPO Box 3721,
DARWIN NT 0801

From: Larrakia Nation Aboriginal Corporation

Date: 28 March 2025

INTRODUCTION

Larrakia Nation Aboriginal Corporation (Larrakia Nation) strongly opposes the proposed amendments set out in the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23)*. These amendments represent a fundamental threat to the independence, integrity, and cultural authority embedded in the existing *Aboriginal Sacred Sites Act 1989*. We urge the Legislative Scrutiny Committee to recommend that this Bill be withdrawn in full.

KEY CONCERNS

1. Ministerial Overreach and Political Interference

The proposed amendments expand the powers of the Minister to appoint and terminate members of the Aboriginal Areas Protection Authority (AAPA). Specifically, section 7(3B) permits the Minister to recommend termination of their nominated members based on vague criteria, such as acting "contrary to the best interests of the Authority."

This language is highly discretionary and lacks procedural safeguards. It creates an unacceptable risk that Authority decisions may be influenced by political priorities rather than cultural or statutory obligations. This undermines the AAPA's independence and opens the door to:

- Appointment of politically-aligned individuals as "Ministerial nominees"
- Targeted removal of Aboriginal members who resist development pressures
- Institutional erosion of cultural protections in favour of short-term economic interests

2. Prioritisation of Economic Development Over Cultural Protection

The Explanatory Statement for the Bill repeatedly frames the purpose of the amendments as reducing red tape and providing certainty for economic development. This reorientation fundamentally alters the purpose of the Act, which is to protect sacred sites according to the wishes of traditional custodians.

Embedding economic facilitation into a cultural protection statute:

- Contravenes the foundational intent of the *Aboriginal Sacred Sites Act 1989*
- Weakens the principle of free, prior, and informed consent
- Conflicts with the *Aboriginal Land Rights (Northern Territory) Act 1976*, which requires that the wishes of Aboriginal people are considered

3. Undermining of Authority Certificates and Custodian Control

The new provisions allowing for the transfer of Authority Certificates and the addition of recorded parties (Sections 24A and 24B) are framed as administrative efficiencies. However, these mechanisms significantly risk:

- Severing the Authority Certificate from the original consultation and cultural conditions
- Allowing third parties to access and utilise land without renewed engagement with custodians
- Diluting the integrity of Authority Certificates as instruments of cultural protection

These changes commodify sacred site clearances, transforming them into transferrable assets rather than the outcome of culturally specific and site-based negotiation.

4. Weakening of Enforcement Through Enforceable Undertakings

The introduction of enforceable undertakings as an alternative to prosecution (Sections 39B–39H) presents several serious risks:

- **Reduced transparency and public accountability:** Prosecutions occur in open court and set legal precedents, while undertakings are negotiated and resolved administratively, with limited public scrutiny.
- **Undermining the seriousness of breaches:** Sacred site damage is treated as a regulatory infraction rather than a violation of cultural lore.
- **Inconsistent enforcement:** The discretion to accept undertakings may result in leniency for powerful actors, creating unequal application of the law.
- **Exclusion of custodians:** There is no requirement to involve traditional owners in developing or approving undertakings.
- **Legal uncertainty:** Undertakings can be withdrawn or varied, undermining finality and accountability.

This mechanism shifts the Act's purpose from justice and cultural protection toward administrative compliance and expediency.

5. Concerns Regarding the Darwin Waterfront Development and Legislative Amendments

Recently, the Northern Territory Government commenced consultations with the Larrakia Nation Aboriginal Corporation in relation to a proposed hotel development within the Darwin Waterfront Precinct. While Larrakia Nation remains committed to constructive dialogue, we have expressed firm opposition to the development in its current form due to the site's proximity to a registered sacred area — Stokes Hill — which holds profound cultural and spiritual significance for the Larrakia people.

In our representations to government, Larrakia Nation has formally recommended that the project be either substantially amended or relocated to an alternative site within the broader Waterfront Precinct, in order to ensure compliance with cultural protocols and avoid unacceptable impacts on sacred Country.

Of particular concern in this context are the proposed legislative changes under the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23)*, specifically those relating to “Recorded Parties” (Section 24B). These amendments would enable third parties — including new or unrelated entities — to be added to an existing Authority Certificate without initiating a new consultation process with traditional owners. This creates a mechanism by which historical Authority Certificates may be revived and re-purposed to support new developments, effectively bypassing current negotiations and cultural assessment processes.

Larrakia Nation strongly opposes this provision. It undermines the fundamental principle that cultural authority and consent must be current, site-specific, and grounded in active engagement with custodians. The proposed amendment enables a retrospective application of consent that was never provided for the current proponent, project design, or intended use.

The inclusion of such provisions not only compromises the integrity of the sacred site protection regime, but also risks setting a dangerous precedent where the views and cultural obligations of traditional owners are sidelined for administrative expedience or development convenience.

6. Structural Power Imbalance and Burden of Proof

The current legislative direction continues to place the burden on Aboriginal people to prove and defend the legitimacy of their cultural heritage. It is time this paradigm was reversed. The Crown should be required to prove that this land was lawfully acquired and that it was ever *Terra Nullius*—a legal fiction repudiated by the High Court in *Mabo v Queensland (No 2)* (1992).

CONCLUSION AND RECOMMENDATIONS

The *Aboriginal Sacred Sites Act 1989* is one of the few legal instruments that acknowledges and enforces the rights of traditional custodians in relation to Country. The proposed amendments compromise its function, reduce its independence, and shift its priorities away from cultural protection toward bureaucratic convenience and economic development.

We urge the Legislative Scrutiny Committee to:

1. **Recommend the withdrawal of the Bill;**
2. **Advocate for a formal review process led by traditional owners;**
3. **Ensure any future reform upholds the legal and cultural integrity of sacred sites and the custodians who protect them.**

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