Nurrdalinji Native Title Aboriginal Corporation
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Secretary, Legislative Scrutiny Committee
NT Parliament
GPO Box 3721
DARWIN NT 0801

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

Dear Members of the Legislative Scrutiny Committee,

NORTHERN TERRITORY ABORIGINAL SACRED SITES LEGISLATION AMENDMENT BILL 2025

The Nurrdalinji Native Title Aboriginal Corporation ("Nurrdalinji") presents this submission to the Legislative Scrutiny Committee on the proposed Bill. We would welcome the opportunity to discuss this submission with you in more detail as part of the consultation process.

Introduction

Who we are

Nurrdalinji was incorporated in 2020 and registered with the Office of the Registrar of Indigenous Corporations on 9 October 2020, following a historic meeting of native title holders from throughout the Beetaloo Basin at Daly Waters.

The name "Nurrdalinji" means "mixed tribe" in Alawa language, reflecting the diversity of members in the Corporation. Our members come from a big area, across the Beetaloo and Barkly regions. Our members include over 60 native title holders, from 11 native title determination areas, throughout the Beetaloo Basin

Nurrdalinji's purpose is to support its members to be consulted about what happens on our country. It seeks to enable its members to be heard and to determine their future aspirations for their country.

Sacred sites are critically important to us

Sacred sites are like an important dictionary book for us. They help educate us and explain our culture. We are responsible for looking after them. Laws that help us to do this are crucial.

This new *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025* ('the Bill') seems designed to make life easier for developers, not protect sacred sites.

If there are sacred sites, the first priority for developers should be to protect them. If it was a church, no one would let it be knocked down.

But the government appears to want to open the Territory up for development, favouring the interests of the property sector, gas, cotton and big farmers, where they have to clear the land and where sacred sites are at risk of not being given the protection they deserve.

This process is too rushed

Aboriginal communities need more time to have a good look at amendments being made to important laws that affect us, but this government is rushing to put in new regulation without us being given time to have a proper say.

The decision to give substantial powers to a Territory Coordinator, allowing the sidestepping of laws designed to protect cultural heritage, water, plants and animals, and which may even impact our native title and land rights, is one example. Another is this Bill.

Unfortunately, the Territory government has a rush, rush, rush attitude.

The vast majority of Aboriginal people living in the Territory would not have heard about this Bill. They don't have easy access to a computer to learn more about it, nor are they easily able to prepare and submit a written submission.

We have only been given a week to make a submission to this scrutiny committee on sacred site law changes which first came to light less than a fortnight ago.

If the government wants to make new laws, the Minister should drive out to where Traditional Owners live and sit down with them and ask them what they think, not fast-track things.

Rushing to change laws, without giving people time to understand them, is short-sighted and will only see bad outcomes for all Territorians.

We are unclear why there's a rush and why only a few changes? Is the Bill designed to benefit developers, not protect our sacred sites, as suggested by the chief executive of Aboriginal Investment NT, Larrakia and Wulna man Nigel Browne?

Mr Browne alleges that this Bill and its provisions in Clause 7 to allow for the transfer of authority certificates are designed to support development of a hotel on the Darwin waterfront. He says:

"In the Larrakia context these regressive reforms mean the proposed Darwin Convention Centre hotel development will proceed on the basis that a 2004 Authority Certificate, issued by AAPA for the original Darwin Waterfront, will be transferred to a foreign developer.

"The developer plans to construct a hotel at least 11 stories high, directly impacting the registered Larrakia Dreaming site situated at and around Stokes Hill, immediately opposite the convention centre.

"Despite the 2004 certificate relating to a different development (ie not originally issued in contemplation of this new hotel) the NT government and their band of merry men are relying on the fact that it does not contain a building height restriction (the very condition Larrakia instructed AAPA to include in any new certificate issued in and around the sacred site)."[1]

[1] Traditional Owners slam NT Government for 'rushed' changes to Sacred Sites Act, 31 March 2025.

Ironically, these changes may make it harder for developers because the controversy surrounding them, as seen in the concern expressed about them by all Territory Land Councils and the Aboriginal Areas Protection Authority (AAPA) Board itself[2], may make it more difficult for developers to get financing.

This process ignores past reviews and recommendations

The Lands, Planning and Environment Minister, Mr Joshua Burgoyne, has publicly stated the Bill implements recommendations of the 2106 *Sacred Sites Processes and Outcomes Review*[3], by PwC, which comprehensively examined areas in which the NT *Aboriginal Sacred Sites Act 1989* ('the Act') might be strengthened to improve protections for sacred sites[4].

It is unclear why so many of the report's 39 recommendations, 21 of which required amendment to the Act, have been ignored when they would have strengthened protections under the Act. For example, these important recommendations are not reflected in the Bill:

- **Rec 6**: requiring compulsory reporting in relation to the damage and/or desecration of a sacred site
- **Rec 7**: allowing for stop work orders to be implemented if a site has been damaged and/or desecrated or is seen to be under threat of being damaged and/or desecrated.
- **Rec 9:** giving guidance under regulations about when the Authority will revoke a certificate.

The Bill itself

Clause 5 - Composition of Authority

With the current push of the government to sidestep our rights and protections and prioritise economic development, as we have witnessed with the NT Coordinator laws, we are concerned that the reason the Ministerial appointments to the APPA Board are being enshrined in law is to ensure the government has more power to influence and weaken the effectiveness of AAPA as an independent statutory body which is fearless and committed to protecting sacred sites for Aboriginal people. If the current longstanding practice of appointing Ministerial nominations has been operating well, as claimed in the Explanatory Memorandum, we see no need for this legislative amendment.

Clause 7 - Transfer of certificate

As it stands, the provision set out in the new ss 24A and 24B impacts our right to be consulted about new development. It risks cutting out Aboriginal people from consultation about development which is different to that originally proposed, while on the same site.

We worry it has been designed to aid certain developers who have struggled to get a sacred sites certificate and who may have pushed for this law change so that they can rush ahead without

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[2] NT government to 'streamline' sacred site laws in bid to reduce red tape, 25 March 2025
[3] You can find the review report here.
[4] 'Arrogance': Indigenous ire at sacred sites amendments, 28 March 2025.

proper consultation and protection of sacred sites which would be required if a different developer at the site was required to apply for a new certificate.

The mandatory requirement for AAPA to transfer a certificate from the old to new developer on the basis it is the *"same land and work or use of the land"* is broad, open to interpretation and corruption.

Read alone, these new provisions require no consultation with impacted Traditional Owners. Yet s42 of the Act is retained, which requires that, *"Before exercising a power under this Act in respect of a sacred site, the Authority or the Minister, as the case may be, shall take into account the wishes of Aboriginals relating to the extent to which the sacred site should be protected.*

It is also unclear how the new transfer provisions interact with s73 (1) (a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* which requires that the Territory government only make laws about sacred sites which requires that they, "...*shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected".*

Is consultation required, or not, as part of the transfer? This may cost Territory taxpayers if an argument about the need for consultation ends up in court.

Clause 9 - Enforceable undertakings

We are concerned this scheme for enforceable undertakings (ss39B-H) is being introduced to favour developers who breach the Act by making available a more lenient form of punishment than those currently available and allowing serious breaches to be sidelined from consideration by the court system.

We are also concerned that AAPA does not have the investigative and compliance powers it needs to properly administer the new scheme in an effective way.

Finally, the proposed s39C (4) gives AAPA the power to publish the notice of the decision and reasons not only on the AAPA website, where everyone can see it, but alternatively 'in any other way determined to be appropriate by the Authority'. This risks that AAPA could hide the decision and reasons from public view. Transparency is important when it comes to contraventions of the Act and so this discretionary option should not be included in the Act.

Conclusion

We have a responsibility to protect our sacred sites and cultural heritage, for us, our future generations and everyone who lives in the Territory.

We shouldn't hurry law reform, especially when it comes to protecting our sacred sites. We need time to discuss and consider new laws, in a way that is appropriate for our communities.

We strongly urge the Northern Territory Government to not go ahead with the Bill, as drafted.

With respect to the terms of reference for this Committee, Nurrdalinji draws the following conclusions:

(i) **whether the Assembly should pass the Bill**

No, the Bill should not be passed in its current form. The Bill should be withdrawn and further consultation conducted, in a way that is sensitive to the consultation needs of Aboriginal communities. Attention should also be given to implementing recommendations of the Sacred Sites Processes and Outcomes Review (2016). Only after this process has occurred should any amendments be proposed.

(ii) **whether the Assembly should amend the Bill**

No, it should be withdrawn. See (1) above.

(iii) **whether the Bill has sufficient regard to the rights and liberties of individuals**

No, it ignores Aboriginal people's right to be consulted about protection of their sacred sites. This is a confused Bill whose new provisions for the transfer of certificates potentially conflicts with s42 of the Act which requires consultation (see *Clause 7 - Transfer of certificate* above).

(iv) **whether the Bill has sufficient regard to the institution of Parliament.**

The Bill, if implemented, and ss 24A and 24B in particular, does not respect the institution of Parliament, as these new sections could be at odds with s73 (1) (a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* which gives the NT Legislative Assembly a limited head of power to only make laws about sacred sites which enshrine consultation with Aboriginal people, requiring it "*take into account the wishes of Aboriginals relating to the extent to which those sites should be protected".*

Yours faithfully,

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Samuel Janama Sandy
Chairperson, Nurrdalinji Native Title Aboriginal Corporation