

Ref: 202505229

Secretary
Legislative Scrutiny Committee

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



**Aboriginal Areas
Protection Authority**
protecting sacred sites across the territory

Dear Committee

**Legislative Scrutiny Committee Inquiry into the Northern Territory Aboriginal Sacred Sites
Legislation Amendment Bill 2025**

We are senior law people from across the Northern Territory and we are very concerned that these amendments will erode protections for our sacred sites. We urge the Assembly to not pass this Bill, and instead engage in a proper consultation process with Aboriginal people across the Northern Territory to bring proper and responsible reform to the protection of sacred sites.

Our places, our sites, our history deserve better, and we demand strong reforms from this Inquiry and from the Finocchiaro Government. We demand that our heritage is respected. We demand to be consulted, and we demand to be listened to.

We support economic development in the NT, and for 45 years the Sacred Sites Act has given a pathway for developers to engage with custodians of sacred sites so that projects are completed in a responsible and sustainable way, and it works.

We also support updating the Sacred Sites Act. We want to see more efficient processes that ensure that our sacred sites are being respected. We want laws that provide developers with a clear framework on what they can and can't do.

But this Bill doesn't do that. It brings risk instead of protection to our sacred sites, and it brings risk for development. It risks creating disputes and legal challenges. It is not good for sacred sites and it is not good for the NT economy.

We are concerned that this Bill is seeking to create a loophole for one project, and if that is the case this is a deplorable action by the Northern Territory Government. Time will tell if this is the case.

We support good changes to the Sacred Sites Act and will work with the Northern Territory Government to achieve this, but we, and the Aboriginal community of the NT must be consulted and must be heard. When strong reforms are enacted and our places are protected, the NT will benefit.

We, the Authority, request a hearing before the Committee on this matter.



Bobby Nunggumajbarr
Chairman
4 April 2025



Lorraine Jones
Deputy Chairman
4 April 2025

Executive Summary

- **Consultation Needed:** any changes to the Sacred Sites Act must be preceded by robust, meaningful consultation with Aboriginal custodians across the NT. There has been no such consultation in the development of the current amendment Bill. The one-week period for response to this Committee is tokenistic and insufficient engagement with Aboriginal stakeholders.
- **Stable Legal Framework:** The current Sacred Sites regulatory framework, has reliably protected sacred sites for over 35 years.
- **Risk of Politicisation:** The amendments allowing ministerial removal of government-nominated Authority members threaten the Authority's independence and invites political interference.
- **Transfer of Certificates:** The amendments permitting transfers of Certificates without renewed consultation override statutory safeguards, are likely inconsistent with the powers of the Assembly and will lead to legal ambiguity.
- **Recorded Parties:** Adding recorded parties without consultation undermines custodians' control of who may enter and work on their Sacred Sites. Only custodians should be able to determine who can work on their Sacred Sites.
- **Enforceable Undertakings:** These amendments would benefit from the standard investigative, compliance, and enforcement powers found in most other regulatory legislation.
- **Increased Legal and Sovereign Risk:** The amendments will lead to increased litigation and regulatory uncertainty, heightening sovereign risk and impacting development.
- **Call for Responsible Reform:** The Authority demands a modernised Sacred Sites Act that balances cultural protection with clear, effective regulatory processes to support sustainable economic development in the NT.

Recommendations

1. There must be thorough and proper consultation with Aboriginal people and their representative organisations across the NT to inform any changes to the Sacred Sites Act.

2. There must be thorough consultation with stakeholders, including industry, to inform any changes to the Sacred Sites Act.
3. Sacred Site protections in the NT must not be weakened.
4. A comprehensive review and modernisation of the Act must be undertaken.

1. Aboriginal Sacred Sites

Our sacred sites are places within the landscape that have a special meaning or significance under Aboriginal tradition. Hills, rocks, waterholes, trees, plains, lakes, billabongs and other natural features can be sacred sites. In coastal and sea areas, sacred sites may include features which lie both above and below the water.

Sacred sites are important because of their association with particular aspects of our social and cultural tradition. The activities of ancestral beings, our ancestors, whose travels across the land and sea created the physical and social world that people now inhabit.

Sacred sites are key markers of our law, beliefs and knowledge systems. They are geographic places and yet they encompass a range of tangible and intangible cultural heritage values that exist in memory, in ceremony, in spirituality, in daily life, and the stories that are integral to our law and culture and place.

Sacred sites are our responsibility as Aboriginal custodians – as traditional owners, as native title holders, but most importantly as people of this land. Some of us senior people exercise greater authority over sacred sites based on our knowledge, gender, or ceremonial experience.

Some sacred sites are powerful and dangerous places and may have restrictions associated with our law, with gender, or seniority. We are concerned to protect all people from contact with these places, as there could be unintended consequences for both those who transgress and also for the Aboriginal people who are the custodians of those places.

Our law dictates that if a sacred site is damaged or infringed upon, the custodians are exposed to retribution and sanctions from others whose ceremonial or kinship obligations are disrupted. In addition, in our law, as custodians we may incur sickness or death as a consequence of offending our ancestors who are associated with a sacred site.

The consequences of damage, desecration or interference with sacred sites for local and regional Aboriginal communities can be immense— even when the damage is caused by someone else like a miner or a government agency doing work.

2. Current framework for the protection of Aboriginal Sacred Sites

The framework for the recognition and protection of Aboriginal Sacred Sites in the Northern Territory is derived from powers provided by the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (the ALRA).

The ALRA provides the NT Legislative Assembly with the power to make laws providing for the protection of Sacred Sites, and the prevention of their desecration, as well as the entry of persons onto Sacred Sites. Section 73(1)(a) of the ALRA provides:

73. Reciprocal legislation of the Northern Territory

(1) *The power of the Legislative Assembly of the Northern Territory under the Northern Territory (Self - Government) Act 1978 in relation to the making of laws extends to the making of:*

(a) *laws providing for the protection of, and the prevention of the desecration of, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and, in particular, laws regulating or authorizing the entry of persons on those sites, but so that any such laws shall provide for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected;*

One of the first Acts passed by the Legislative Assembly of the Northern Territory following self-government in 1978 was the *Aboriginal Sacred Sites Act 1978*. That Act was the subject of a significant review in the mid-1980s, resulting in the current version of the Act, which commenced in 1989. Since then, the Act has been subject to minor amendment (other than consequentially) on three occasions.

The Sacred Sites Act has provided a stable and consistent framework for the protection of Aboriginal sacred sites for more than 35 years. The key protective measures include the mechanisms of sacred site registration and the issuing of Authority Certificates to developers, investors, government agencies and other users of land, for proposed developments.

Authority Certificates are statutory instruments issued in accordance with Part III of the Sacred Sites Act. Authority certificates provide a legal indemnity against the offence provisions in the Sacred Sites Act.

Authority Certificates are voluntary, but they are an effective management tool for developers because they give clear guidance on where sacred sites are, and how to work alongside them. This helps prevent damage to a sacred site, which can lead to prosecution, reputational damage, project delays and extra cost.

The process for making an Authority Certificate requires consultation with Aboriginal custodians of sacred sites in relation to the proposed development works. Through the consultation process, custodians will identify those sacred sites that may be impacted by a proposed development. The custodians will also inform the conditions that are necessary to ensure that their sacred sites can be protected, and for the development to proceed.

All significant developments in the Northern Territory require the benefit of an Authority Certificate in order to conduct activity free from risk of damage to sacred sites. Proponents in the mining, oil and gas sectors, and developers of public and private infrastructure require an Authority Certificate as part of their due diligence processes, with receipt of an Authority Certificate often being an essential and early regulatory approval that influences the financing of major developments.

Through the work of the Authority, developers can have confidence to proceed with investment.

The protection of Aboriginal sacred sites in the Northern Territory is critical, not only for the preservation of Aboriginal cultural heritage, but also for providing certainty to developers and investors. A well-regulated Authority Certificate system helps manage risk by ensuring that projects will not result in damage to or desecration of sacred sites, minimising legal risk and financial exposure.

The consequences of failing to adhere to these protections can be severe, leading to delays, increased costs, reputational damage, and potential prosecution. Moreover, maintaining a strong social licence to operate is essential for long-term project success, particularly in sectors such as mining, oil and gas, and infrastructure development.

By ensuring clear regulatory processes and effective consultation with Aboriginal custodians, the NT can mitigate sovereign risk, strengthen investor confidence, and attract sustainable economic development while upholding the integrity of sacred site protections.

3. Consultation on changes to the Sacred Sites Act

There has been no consultation with Aboriginal people or the Northern Territory Land Councils on the amendments in this Bill, despite statements by the Hon Joshua Burgoyne, Minister for Lands Planning and the Environment, suggesting otherwise.

The Minister met with the Authority on 25 February 2025 and discussed the concept of reforming the Sacred Sites Act in only the broadest terms. He did not outline the substance of any specific reforms, nor the government's timeframes.

Subsequently, the Minister met with the four NT Land Councils on 20 March 2025, where he outlined an intent to amend the Sacred Sites Act. However, the Minister did not provide details of the reforms, indicating instead that a copy of a Bill would be provided to the Land Councils in the following week. Instead, the Minister tabled the Bill in the Legislative Assembly.

At the Legislative Scrutiny Committee on 1 April 2025, the Deputy Chief Executive of the Department of the Chief Minister and Cabinet (DCMC) erroneously stated that targeted consultation with the Aboriginal Areas Protection Authority had taken place in February, when it had not. It was further implied that consultation had occurred in relation to previous proposals to amend the Sacred Sites Act, and during the 'Sacred Sites Processes and Outcomes Review' conducted by PwC Indigenous Consulting in 2016; however, that consultation was not about these amendments, and was more than 10 years ago.

Additionally, the DCMC representative mentioned that several Northern Territory Government Departments had been consulted on the drafting of the bill. Notably the list included the Darwin Waterfront Corporation, who she stated were consulted for their expertise in Authority Certificates (see below).

Legislative change should be informed by consultation with relevant stakeholders to ensure that the law is well-founded, effective, and reflective of community needs. These amendments lack such consultation - a surprising omission given recent controversies surrounding consultation processes in the Northern Territory.

Recent decisions, including *Tipakalippa v Santos NA Barossa Pty Ltd* ([2022] FCA 997), have firmly established that consultation with Aboriginal communities must be both substantive and culturally appropriate. In response, the NOPSEMA '*Consultation in the Course of Preparing an Environment Plan Guideline*' was introduced to provide clear expectations for engaging traditional custodians through direct, face-to-face interactions that respect cultural protocols.

Although subsequent developments, such as the *Munkarra* decision¹, may have nuanced these expectations, the fundamental requirement remains: consultation must extend beyond mere procedural formality to genuinely capture the full depth of Aboriginal cultural interests.

These precedents underscore the urgent need for any legislative changes affecting sacred sites to adhere to high consultation standards that truly empower Aboriginal voices and uphold traditional authority.

The consultation process for this Bill is fundamentally inadequate. Reliance on this Committee's one-week submission window fails to provide a meaningful opportunity for genuine engagement—especially for people residing in remote communities with limited or no internet connectivity. This approach undermines established cultural protocols and cannot be regarded as sufficient consultation in its own right.

The Sacred Sites Act is a Territory law designed to protect and uphold Aboriginal law. It is therefore imperative that Aboriginal people in the Northern Territory are properly consulted before this Bill can proceed.

4. Concerns with the proposed changes in this Bill

The following section outlines concerns about the proposed amendments.

4.1 Members of the Authority (new ss 7(3A) - (3B))

The proposed amendments grant the Minister discretionary power to recommend the removal of government-nominated Authority members, without any requirement for cause or justification.

This represents a significant shift in governance that threatens the independence of the Authority.

Unlike the carefully structured process for Aboriginal member appointments, where nominations come from Land Councils and removals must be justified on clear grounds, government-nominated members could now be removed at will. This introduces the potential for political interference.

Over its 45-year history, government-nominated members have played a critical role in maintaining stability and ensuring that the Authority operates independently and in accordance with its statutory mandate. These amendments create a pathway for governments to exert undue

¹ Notably the Authority consulted Larrakia custodians in respect of the section of the Barossa Project that falls with Northern Territory coastal waters and issued an Authority Certificate. This part of the project was not contested and was not part of the *Munkarra* court case. This is a testament to the capacity of the *Northern Territory Aboriginal Sacred Sites Act* to provide certainty for custodians and developers, such as Santos, alike.

influence over the Authority's decision-making, particularly in cases where its responsibilities to protect sacred sites conflict with government development priorities.

The Authority's credibility relies on its ability to operate free from political pressure, and any changes that weaken this independence risk eroding public, industry, and Aboriginal trust in its ability to uphold the protections enshrined in the Sacred Sites Act.

4.2 Transfer of Authority Certificates

The proposed amendments enable the transfer of an Authority Certificate without requiring consultation with Aboriginal custodians and limit the Authority's discretion to assess whether a transfer is appropriate.

These changes undermine the core function of Authority Certificates, which are to ensure that sacred sites are protected in accordance with Aboriginal law and custom.

It is possible that the purported removal of consultation obligations in this Bill may place the amendments beyond the Assembly's power. As noted earlier, pursuant to section 73(1)(a) of the ALRA, the Northern Territory has legislative authority to protect sacred sites, but this power expressly requires that such laws shall take into account the wishes of Aboriginal people relating to the extent to which their sacred sites shall be protected. By allowing the transfer of an Authority Certificate without consulting Aboriginal custodians, the amendments may be inconsistent with this requirement, potentially exceeding the Northern Territory's legislative competence.

Similarly, section 42 of the Sacred Sites Act mandates that the Authority must have regard to the wishes of Aboriginals relating to the extent to which a sacred site should be protected, before exercising a power under the Act in respect of a sacred site. The proposed amendments override this requirement by compelling the Authority to transfer certificates without discretion, removing its ability to assess whether contemporary custodians consent to the continued use of a certificate.

The amendments present additional legal risk in a number of practical situations:

- Loss of relevance over time – Some Authority Certificates may be decades old. The works or land use originally assessed and consulted on may no longer align with the contemporary setting. Automatic transfers could allow outdated certificates to apply to fundamentally different projects in a contemporary setting.
- Uncertainty about whether a certificate is still valid – A certificate may have been issued for a project that was never completed, partially completed, or significantly altered. Or the works for which a certificate was issued may have been completed. In such cases, the

certificate may be spent. The amendments do not account for such cases, creating potential legal ambiguities.

- Lack of engagement with contemporary custodians – The original custodians consulted during an assessment process may have passed away. Transferring a certificate without new consultation excludes the wishes of the current custodians who hold cultural authority over the area and their sacred sites.
- Potential for inappropriate recipients – A certificate issued to one entity may not be appropriate for another. The amendments remove the ability to assess whether a transferee is a fit and proper entity to hold the certificate. This increases the potential disputation and legal risks associated with a party who, for example, has a conflict of interest, is in a legal dispute with custodians, a poor compliance history, or history of inappropriate behaviour towards custodians.

4.3 Recorded Parties for Authority Certificates

The proposed amendments allow recorded parties to be added to an Authority Certificate without any consultation with Aboriginal custodians.

This proposal also appears to bypass the consultation requirements reflected in section 42 of the Sacred Sites Act and section 73(1)(a) of the ALRA. This proposal presents the same legal and practical risks identified in the preceding section.

While adding additional parties to a certificate may be useful for recognizing new stakeholders or accommodating multiple parties involved in land use, this flexibility must be balanced with safeguards that ensure the ongoing involvement and consent of Aboriginal custodians. Without such protections, the amendments diminish custodians' control over their sacred sites and conflict with statutory requirements that mandate that their views must be considered. Ultimately this risks inconsistency with the legislative framework.

These amendments to the Sacred Sites Act carry a broader risk for economic development in the NT by weakening the regulatory framework which in this context creates risk for custodians of sacred sites and proponents of development alike. The risk of legal challenges, and Federal Government intervention will impact on the cost and timeframes for development and will introduce sovereign risk that will ultimately repel investment.

5. Enforceable undertakings (new Part IVA)

The proposed enforceable undertaking provisions are modelled on provisions in the *Petroleum Act 1984*. However, enforceable undertakings under that Act exist within a broader compliance

and enforcement framework that includes investigative powers, compliance monitoring, and sanctions for breaches.

The amendment Bill does not include these complementary mechanisms for enforcement, regulatory oversight, and the protection of sacred sites.

The Authority has no explicit power to compel information, conduct site inspections, or verify compliance with an undertaking. This creates a significant enforcement gap and reduces accountability for non-compliance.

These powers have been subject of previous recommendations to amend the Sacred Sites Act, but are not included in the current bill.

6. The Darwin Waterfront Corporation

The Legislative Scrutiny Committee was advised by DCMC that the Darwin Waterfront Corporation was consulted in the drafting of this Bill, on the basis of their experience with planning and development and sacred sites. In addition, there were specific questions from members of the Committee about the Darwin Waterfront Corporation. The following seeks to address these questions.

Authority records indicate that the Corporation holds only one Authority Certificate in relation to development within the Darwin Waterfront precinct, and that the Waterfront Development is subject to a number of Authority Certificates held by various NT government agencies.

The Authority has been engaging with the Corporation since 2022 regarding a proposed development adjacent to the Larrakia Cultural Centre and the registered sacred site Delila (5073-93), also known as Stokes Hill. This site, which has been recorded since 1914 and formally registered by the Authority in 2006, holds enduring spiritual significance for Larrakia custodians.

The Larrakia Cultural Centre is located within a built-up area of the precinct and is subject to a height restriction under its Authority Certificate. This restriction was imposed to preserve the sanctity of the sacred site and to protect the cultural landscape in accordance with the wishes of Larrakia custodians.

The Authority provided written advice to the Corporation in 2023, recommending that any proposed development in the vicinity of the sacred site should be the subject of a formal Authority Certificate application. To date, no application has been lodged by the Corporation.

Using the above as an example, if these amendments are passed, particularly those enabling the addition of recorded parties to existing Authority Certificates, in the Authority's view, this raises

concerns about the potential circumvention of the formal consultation and assessment processes prescribed under the Sacred Sites Act. This would be of particular concern where development proposals may otherwise be subject to cultural constraint not reflected on an Authority Certificate issued nearly two decades ago.

7. Conclusion

These amendments impact on the protection of Aboriginal sacred sites but have been developed without any consultation with Aboriginal people.

The amendment Bill also appears inconsistent with the requirements of section 73(1)(a) of the ALRA, which provides the Northern Territory with the head of power to legislate for the protection of sacred sites.

The Authority is concerned that these changes will undermine the regulatory certainty that is currently enshrined in the *Northern Territory Aboriginal Sacred Sites Act 1989*. This is likely to have the unintended consequence of increasing litigation and exacerbating sovereign risk for development in the Northern Territory.

Yours sincerely,



Bobby Nunggumajbarr
Chairman
4 April 2025



Lorraine Jones
Deputy Chairman
4 April 2025