



# Gudanjı Yanyuwa Garrwa Marra Aboriginal Corporation

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The Secretary  
Legislative Scrutiny Committee  
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## Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025

Gudanjı Yanyuwa Garrwa Marra Aboriginal Corporation (GYGM) is a Traditional Owner led organisation based in Borrooloola, whose mission is protection of culture, land rights and country. GYGM is also a cultural heritage body for the Borrooloola region.

We know from our combined experiences the vital role the *Northern Territory Aboriginal Sacred Sites Act 1989* plays in helping to protect our sacred sites. Some of our forefathers were founding members of the Aboriginal Areas Protection Authority (AAPA) and have worked alongside other custodians and staff to fight for the protection of our sites and our cultural values.

We also know from our combined experiences the pain and suffering we have endured when our sacred sites have been damaged or threatened. Our country is host to many major developments inclusive of the McArthur River Mine and its port and associated infrastructure. We are therefore in a uniquely informed position to provide feedback on this amendment bill.

GYGM understands the expressed intent of the amendments is to modernise the Sacred Sites Act, improve protections for sacred sites, and improve efficiency. We sincerely hope that this is the case.

The NT Government's ability to make laws relating to sacred sites derives from the *Aboriginal Land Rights (Northern Territory) Act 1976* (section 73), which states:

- (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;

We believe the amendments as they stand may be inconsistent with this clause, and that they may enable outcomes that do not ‘take into account the wishes of Aboriginals relating to the extent to which those sites should be protected’.

GYGM does not support the bill unless the sections pertaining to the transfer of authority certificates and adding recorded parties are strengthened, as per our recommendations, to ensure sacred sites are appropriately protected.

## **7: Sections 24A and 24B inserted**

### ***24A Transfer of Certificate***

This clause aims to increase efficiency and provide greater certainty for business by enabling the transfer of authority certificates. GYGM acknowledges this may be sensible in many cases, to avoid duplicating consultations. However, in some circumstances an automatic transfer will not be appropriate. We are concerned the wording removes AAPA’s discretionary power by providing that they ‘must’ issue a new certificate to a transferee.

The proposed amendment appears to remove AAPA’s ability to consult with custodians about a transfer of certificate, which may be in conflict with section 42 of the Sacred Sites Act:

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.

We understand the amendments are to be applied retrospectively, which could mean certificates issued more than thirty years ago would be transferred without any consultation. Custodians consulted previously would not have been told about the possibility of future transfers and both cultural knowledge systems and technologies applicable to current works may have changed. Additionally, the Act does not include any provisions by which custodians can appeal the issuing of a certificate; as such, the certificate being transferred may never have been agreed to by custodians.

Certificates are currently issued without an end date - so certificates could potentially be transferred from one company to another in perpetuity, without any consultation with custodians. This scenario is not acceptable.

GYGM recommends 24A be amended such that AAPA ‘may’ issue a new certificate to a transferee. At a minimum, it should include an exceptions clause, giving AAPA the ability to consult with custodians about a transfer application and to vary the certificate or decline a transfer under circumstances including any of the following:

- a significant period of time has passed since the original certificate was issued (especially where this predates the amendment);

- new information has become available since the certificate was issued (for example, data on the methodologies and impacts of the works or new site data not previously recorded); or
- the transferee has previously been found guilty of breaches against the Act, there has been a breach or complaint that has not yet been resolved or investigated, or an enforceable undertaking is in place against the transferee.

GYGM also recommends the addition of a clause that custodians are to be notified of the transfer of a certificate.

GYGM does not support the insertion of 24A unless these amendments are made.

### ***24B Recorded parties for Certificate***

We are similarly concerned by AAPA's lack of discretionary power when applications are made for a recorded party to be added to a certificate. We believe the removal of AAPA's ability to consult may again be in conflict with section 42 of the Sacred Sites Act.

GYGM recommends amending 24B(4) such that on receipt of an application to add a recorded party to a certificate, AAPA 'may' (rather than 'must') issue a replacement certificate. This would give AAPA the discretion to consult with custodians where appropriate, to meet its obligations under section 42.

GYGM does not support the insertion of 24B unless this amendment is made.

## **9. Part IVA inserted: Enforceable undertakings**

Under 39C(2) of the bill, AAPA is required to consider (c) the benefits of the proposed undertaking and the public interest; and (d) the interests of justice, before accepting an enforceable undertaking. GYGM expects this to include consultation with custodians where relevant, consistent with section 42.

Under 39B(2), an enforceable undertaking may include carrying out remediation work to rectify damage. It is essential that any plan to undertake remediation work is developed in collaboration with custodians, and that custodians are present when that work is undertaken.

### **Further amendments**

Aboriginal people have long been calling for other amendments to the Act, not contemplated in this bill, that would improve protection of sacred sites while increasing certainty for all stakeholders.

GYGM strongly supports updating the Act to:

- modernise the criminal offence framework and align penalties for breaches of the Act with NT environmental offences and penalties (as per Recommendation 2 of the independent review of the Act<sup>1</sup>)

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<sup>1</sup> PwC's Indigenous Consulting *Sacred Sites Processes and Outcomes Review*, Department of the Chief Minister 2016.

- strengthen AAPA's compliance and enforcement powers
- introduce a process for custodians to appeal the issuing of a certificate
- ensure section 47 of the Act operates effectively, enabling AAPA to more efficiently gain access to land for the relevant purposes of the Act.

### **Concluding remarks**

While GYGM understands and supports the need to update parts of the Act, we are concerned at the haste in which the government has introduced this bill and the lack of consultation afforded to stakeholders. It appears to be a worryingly opportunistic move to appease certain developers rather than a genuine and engaged process of review.

We emphasise the importance of seeking input from Aboriginal Territorians for all changes to the Act. GYGM would welcome the opportunity to comment on an exposure draft of any future proposed amendments.

**Gudanji Yanyuwa Garrwa Marra Aboriginal Corporation Board**