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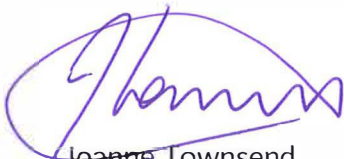
Dear Chair

Re: Heritage Amendment Bill 2026

Thank you for your correspondence of 7 April 2026 regarding the Heritage Amendment Bill 2026.

The Department of Lands, Planning and Environment has reviewed the information provided by the Legislative Scrutiny Committee and has provided a written response at Attachment A to each of the matters raised therein.

Yours sincerely



Joanne Townsend
Chief Executive Officer

13 April 2026

**Department of Lands, Planning and Environment Response
Heritage Amendment Bill 2026**

Definitions

1. The Northern Land Council (NLC) noted that while the Bill incorporates references to 'owner of the place', 'owner of the land', and 'owner of the object', neither the Act nor the Bill includes a definition of 'owner' other than in section 67 which is a specific definition for the purposes of Part 3.1 (Heritage Agreements).
 - a. Given the concerns raised by submitters regarding the meaning of 'owner', was any consideration given to the inclusion of a definition of owner as it relates to place, land and objects? If not, why?

Answer:

- That issue was considered but not adopted because the *Heritage Act 2011* (the Act) regulates diverse interests that vary by context. The Explanatory Statement explains this difference. The Bill uses the terms "owner of the place", "owner of the land", and "owner of the object" to ensure the regulatory burden falls on the correct legal interest. In work approval provisions specifically, this distinction is critical – the decision to allow works on private land that is not Aboriginal land primarily engages the legal rights of the owner of the land. On Aboriginal land, Land Trusts and Land Councils hold the relevant legal interests on behalf of traditional owners and have full consent rights accordingly. Simultaneously, the Bill recognises that other persons may hold a traditional right to possess an object found on private land that is not Aboriginal land, and that those persons, who may have cultural interest of the object, should be consulted in relation to that object. A single definition of "owner" would not have captured those distinctions.
2. The Bill introduces temporal references, specifically defining 'pre-contact' and 'early contact periods'. GHD and the Land Councils expressed the view that the definition of 'early contact period' requires further clarification given the extensive and prolonged contact that occurred in the NT prior to, and independent of, British colonisation. That constraining protection to an undefined 'early' phase introduces interpretive uncertainty and may unintentionally exclude later contact period archaeology from protection under the Act.
 - a. As temporal references do not appear to be included in heritage legislation in other jurisdictions, can you explain the rationale for their introduction in the Northern Territory?

Answer:

- The rationale for these references is to provide a precise statutory trigger for automatic protections under the Act. They are not intended to limit protection, but to distinguish Aboriginal and Macassan archaeological heritage from other categories that may require different assessment pathways. Legislation in other jurisdictions do not have temporal references when discussing Aboriginal places of significance because their definitions also scope in places of contemporary spiritual significance, whereas in the Northern Territory, this is the domain of the *Northern Territory Aboriginal Sacred Sited Act 1989*. The Bill does not remove the ability to protect significant material from later periods and retains the capacity to protect other places of cultural significance to Aboriginal people without temporal references e.g. massacre sites, stolen generation homes.
3. The Explanatory Statement acknowledges that the timing of early contact may vary across the Territory, and that the application of temporal references will have regard to historical and archaeological evidence. However, submitters suggested that the definition of early contact period still requires clarification to ensure there can be no doubt that it covers the period within which archeologically significant places and objects were created.

- a. Can you provide examples of how historical and archaeological evidence will be used to determine the beginning and end date of an early contact period?

Answer:

- The “early contact period” is not fixed to a universal date because contact varied across the Territory’s diverse regions. The determination of these periods will be informed by localised evidence, such as documentary records of first sustained contact or archaeological finds of introduced materials like glass or ceramics. This evidence-based approach allows the statutory test to be applied flexibly, consistent with archaeological practice, and in accordance with the actual history of a specific area rather than a prescribed or fixed Territory-wide start and end date, which can be historically inaccurate.

Meaning of Archaeological, Aboriginal or Macassan archaeological places and objects

4. Proposed section 6(2)(a) provides that a place that relates to the past human occupation of the Territory by Aboriginal or Macassan people during the pre-contact period or early contact period, and contains a group of relics related to that occupation that were deposited in or near the place, or stored in the place in accordance with Aboriginal tradition, is an Aboriginal or Macassan archaeological place. Submitters raised concern that the absence of defined thresholds in relation to what constitutes a group of relics may lead to interpretive disputes, delays in registration and approval processes, increased administrative workload for the Heritage Council and will also make prosecutions problematic.
 - a. In the absence of a defined threshold as to what constitutes a group of relics, can you explain how such will be determined and what guidance material will be provided to assist in this regard?

Answer:

- The Bill avoids a rigid numerical threshold to prevent arbitrary outcomes. Whether relics constitute a “group” is assessed objectively by looking at archaeological context, spatial density, and the relationship of the relics to the place. Guidance material can usefully explain this with examples and practical indicators, but the statutory test is deliberately framed as an objective contextual assessment rather than a numerical rule. That is also more workable for different site types across the Territory. Certainty and clarity will be provided in guidance material e.g. ‘What is an Aboriginal archaeological place under the Heritage Act’ and ‘Minimum standards for archaeological surveys’.
5. The Land Councils also raised concern that where an object was stored in accordance with Aboriginal tradition but had since been moved by a non-Aboriginal person to a different location, it would not qualify for automatic protection under Territory law irrespective of the fact that it had not lost its religious or archaeological significance simply because it had been moved.
 - a. Can you explain what mechanisms are in place to afford protection to objects that have been moved and are no longer necessarily stored in accordance with Aboriginal tradition?

Answer:

- The Bill provides automatic protection for Aboriginal archaeological objects that reside in their original or close to original location in the landscape. That is, they remain within an Aboriginal archaeological place. If those objects are recovered by non-Aboriginal people as part of a work application and placed into for example a museum collection, those relics are no longer archaeological objects protected under the Act. The Act maintains appropriate enforcement mechanisms to protect heritages objects from being damaged or moved unless permitted under the Act, but the Act has never been interpreted to include the ongoing protection and management of recovered relics in museums and universities. This issue is beyond the scope of the Act and relates to

broader questions about collection institutions, repatriation, Keeping Places and Resting Places for ancestral remains.

Meaning of Relic

6. The Bill amends the definition of a relic to provide that it is ‘an artefact or thing given shape by a person, ancestral remains or something else prescribed by regulation.’ GHD raised concerns that the phrase ‘given shape by a person’ may exclude items such as grinding stones.
- a. Is it intended that items such as grinding stones would need to be prescribed by regulation in order for them to be considered a relic under the proposed amendment?

Answer:

- No. It is not intended that items such as grinding stones will need to be prescribed by regulation if they otherwise fall within the concept of an artefact or thing given shape by a person. The regulation-making power is supplementary. It is not intended to be the primary mechanism by which commonly recognised archaeological materials are brought within the Act. The purpose of the revised relic definition is to modernise and clarify the provision while ensuring it aligns with the place-based definitions in section 6, not to exclude commonly recognised archaeological material. It is the intent that grinding stones are scoped in in the definition of artefacts and that ‘given shape’ will not be interpreted so narrowly as to exclude a grinding stone.
7. The Bill clarifies that an artefact or thing may be of any material and updates examples accordingly.
- a. As suggested by GHD, in relation to early contact-period archaeological relics, was any consideration given to including glass and ceramic as examples? If not, why?

Answer:

- The Bill clarifies that an artefact or thing may be of any material, and the examples are intended to be illustrative rather than exhaustive. On that basis, glass and ceramic are not excluded simply because they are not listed. The drafting approach taken was to avoid an overly prescriptive list and instead make clear that material type does not operate as a limiting factor. That allows the definition to remain flexible enough to capture early contact period materials where they otherwise satisfy the statutory criteria, including in contexts where glass or ceramic may be part of the archaeological record. Glass and other materials will be discussed in guidance material.
8. While the Explanatory Statement notes that the proposed amendments modernise terminology, GHD noted that the term ‘relic’ is considered to be an archaic term within Australian archaeology.
- a. Was any consideration given to updating the term relic with more precise and inclusive terminology? If not, why?

Answer:

- The reform focus was on clarifying the content and operation of the definition rather than renaming the term itself. “Relic” is already embedded in the structure of the Act and linked to the surrounding place and object provisions. The Bill modernises the terminology within the definition, including replacing “human remains” with “ancestral remains”, clarifies exclusions, and aligns the concept with the amended section 6. In that sense, the Bill addresses the practical issue, which is how the term operates in the legislation, without undertaking a broader renaming exercise.
9. The NLC raised concerns that the carve out of an artefact or thing that is ‘made for sale’ fails to acknowledge that it is well established in archaeological and anthropological records that artefacts were produced or created for the purpose of trade or sale and trade was, and remains, a key part of Aboriginal custom and tradition.

- a. Can you clarify for the Committee the intended operation of the Bill in relation to the preservation of archaeological artefacts that may have been made for sale or trade?

Answer:

- The point of the carve out is to exclude newer items or things made commercially, and replicas made for educational or artistic purposes, so that such items are not brought within the relic definition merely because they resemble older material. It is not intended to deny protection to genuine archaeological material that forms part of the historical record of past trade or exchange.

Council to accept or refuse to accept nomination

10. The NLC raised concerns that the Bill amends section 21 to provide that the Council may refuse to accept a heritage nomination if, among other things, it 'considers it appropriate to do so.'

- a. Under what types of circumstances would it be considered appropriate for the Council to refuse to accept a heritage nomination?

Answer:

- The amendment is intended to give the Council a practical front-end screening function. The Explanatory Statement already identifies frivolous, vexatious, misconceived and lacking substance as express grounds. The "otherwise appropriate" limb is intended to operate as a residual category for cases that do not fit neatly within those labels but where it is still appropriate not to commit full assessment resources. That could include, for example, a nomination that is too big (or too small), a nomination that substantially duplicates a recently considered matter, or a nomination that is not properly directed to the subject matter and purpose of the Act. The policy intention is to improve the efficiency of the nomination process and reduce backlog, not to create an unconfined discretion.

- b. Can you explain why decisions made under proposed section 21(2A)(b) are not reviewable?

Answer:

- Under the existing Act, the rejection of a nomination is not a reviewable decision. There is therefore not a loss of existing procedural fairness for the nominator. At the nomination stage, the place or object has not been proven to be significant. Therefore, the burden to manage a reviewable decision is not proportional to the interest. If a nomination is not accepted, the Council must provide written notice to the nominator and reasons for the decision.

Assessment period

11. The Minerals Council Australia NT Branch (MCA) and GHD raised concerns that, as currently drafted, section 23 regarding calculation of the six month assessment period, effectively provides for an assessment period of up to nine months before a decision is required, notwithstanding that mechanisms also exist under section 23(2) to extend the assessment period further where appropriate.

- a. Can you explain why the assessment period is tied to the day the Council commences work on the assessment rather than the day the Council accepts a nomination for, or initiates an assessment?

Answer:

- The Bill is designed to reflect how the assessment process operates in practice, while also imposing structure around when the clock must start. Acceptance of a nomination or initiation of an assessment is an administrative step, it does not necessarily mean that assessment work has begun. For that reason, section 23 ties the assessment

period to the earliest of three points: when work on the assessment begins, the next in-person Council meeting after the trigger day, or three months after the trigger day. That means commencement cannot be delayed indefinitely. The combination of these three triggers is intended to separate acceptance from actual assessment work, while still ensuring that a clear statutory period begins within a defined outer limit.

- b. In relation to proposed section 23(2)(b), what types of reasons would be considered appropriate in relation to extending the assessment period?

Answer:

- The Bill expressly refers to remoteness, but the broader category is intended to allow for practical circumstances that cannot always be exhaustively codified. Appropriate reasons may include access constraints, weather and seasonal conditions, the need for further fieldwork, complexity of the site, or the need to obtain additional expert information. The safeguard is that the Council must give written notice of the extension and reasons for it, and must complete the assessment as soon as practicable.

12. It has been suggested that operation of sections 23(1) and 23(2)(b) may impose onerous delays for proponents, particularly where assessments are linked to future work approvals, and may effectively inhibit MCA members from planning the next stage of a mineral development program, commit to contractors, or present a project timeline to investors when a heritage assessment covering its licence area has no defined endpoint.

- a. What consideration was given to the potential impact the operation of proposed sections 23(1) and 23(2)(b) may have on industry?

Answer:

- That impact was considered. The Bill's purpose is to improve certainty compared with the current position by defining the trigger day, fixing the earliest start framework for the 6-month period, requiring written reasons for extensions, and requiring the assessment to be completed as soon as practicable. In that sense, the reforms provide more structure and predictability around the assessment period than the current Act, while still preserving enough flexibility to deal with genuinely complex or remote matters. That is consistent with the broader objective of improving regulatory certainty while maintaining heritage protections.

- b. In order to provide industry a greater level of certainty around assessment periods, has any consideration been given to limiting the number of allowable assessment extensions or replacing the open ended extension grounds in 23(2)(b) with defined additional circumstances? If not, why?

Answer:

- A hard limit was not adopted because the Territory deals with a wide variety of places and practical conditions, and a rigid cap could operate unfairly or impractically in complex cases. The Bill instead uses different safeguards: the Council must give written reasons, provide notice, and complete the assessment as soon as practicable. That approach was preferred because it preserves accountability while allowing sufficient flexibility to deal with circumstances that cannot be predicted exhaustively in legislation.

Public consultation on heritage significance of place or object

13. The Explanatory Statement notes that the Bill amends sections 26(2)(b) and 45(2)(b) to allow for a longer consultation period beyond 28 days if specified in the notice. As currently drafted the proposed amendment provides that submissions are to be made to the Council 'within 28 days, unless specified otherwise, after the notice...'. During the public briefing it was noted that the proposed amendment does not provide the opportunity to reduce the 28 day timeframe.

- a. Given the wording of the proposed amendment, can you please explain what would prevent a period of less than 28 days being specified in the notice?

Answer:

- The policy intent is that 28 days remains the minimum consultation period and that the amendment allows longer periods where warranted by the scale or complexity of the matter. That is how the amendment is described in the Explanatory Statement and supporting materials. If the text is thought capable of supporting a different reading, that is a drafting clarification issue rather than a policy issue. The intended operation is that the Bill introduces flexibility to extend consultation beyond 28 days, not to shorten it.

Minister's decision not to declare heritage place or object

14. The Historical Society NT (HSNT) questioned whether the repeal of section 35(4) removes the Minister's obligation to publish reasons for rejecting a Heritage listing recommendation from the Council.
 - a. Can you clarify if the Committee is correct in understanding that the Minister's obligation to publish notice of the revocation of provisional declarations is now provided for in new section 39A(3)?

Answer:

- The submission from HSNT refers to a repeal of section 35(2) which is incorrect – this section is unchanged.

In relation to the Committee's question, yes correct. The repeal of section 35(4) must be read together with the revised declaration and revocation framework. Under that revised framework, section 39A(3) requires the Minister to publish notice of revocation of a provisional declaration as soon as practicable after revoking it. The Bill therefore relocates the revocation publication obligation into the new consolidated provisional declaration framework.

Provisional declaration – after Division 3 assessment

15. HSNT raised concern that the repeal of section 37 will mean that public comment on a provisional listing would not be afforded where the Minister, for whatever reason, decided they didn't agree with a heritage Council recommendation to proceed with provisional listing.
 - a. Can you clarify for the Committee the public consultation requirements in relation to provisional listings?

Answer:

- The repeal of section 37 removes automatic provisional declarations, which is the precursor to public consultations under the current Act. The Bill removes this automatic provisional declaration but retains provisional declarations as a separate discretionary, risk-based mechanism under section 36 where the Minister is then required to direct Council to start an assessment (if they have not done so yet). If the Council, after the direction from the Minister, determines that a place or object is of heritage significance, public consultation will follow. Therefore, public consultation remains part of the pathway to permanent declaration, but provisional declarations are no longer the procedural event that triggers public consultation. This is intended to separate consultation from automatic restrictions on land use, while preserving the ability to act quickly where interim protection is genuinely needed.

Revocation of provisional declaration

16. Proposed subsection 39A(1)(c) provides that the Minister must revoke a provisional declaration of a place or object to be a heritage place or object if the Minister decides under section 32 not to declare the place or object to be a heritage place or object. HSNT noted that unlike the revocation provisions in proposed section 39A(1)(b) and (b), the Minister will

have the discretion to revoke provisional declarations in the absence of, or contrary to the advice provided by the Heritage Council.

- a. Can you clarify if the Committee is correct in understanding that the Minister's decision under section 32 is, in fact, subject to the Council's recommendation?

Answer:

- Yes. Section 32 continues to sit within the declaration framework that follows the Council's recommendation process. Section 39A(1)(c) does not bypass that role, it simply provides that if the Minister ultimately decides under section 32 not to declare the place or object, any provisional declaration must then be revoked. So the Minister's final declaration decision remains informed by the Council's recommendation, and section 39A addresses the legal consequence of that final decision for any provisional declaration that is in place.

Notice of declaration of heritage place or object

17. The Bill updates section 40(3) and (4) to require that publication of the notice of declaration of a heritage place or object be published on the Agency's website while retaining the requirement on the Registrar-General to record the declaration in the record of administrative interests under the *Land Titles Act 2000*. MCA suggested that notification via the agency's website was not a reliable notice for companies with a project team operating at a remote site as communication infrastructure is often intermittent. It was further noted that the subsequent unmitigated regulatory exposure creates a legal and operational risk.

- a. Given that publication on the agency's website is not a new provision, can you clarify whether there have been any instances to date where notification issues have resulted in a company inadvertently operating in breach of the Heritage Act?

Answer:

- The Department is not aware of any systemic example of that kind arising from website publication. Publication on the Agency's website is already part of the current framework and the Bill retains that approach while also preserving the Registrar-General's role in recording declarations affecting land titles. It is also relevant that *Gazette* publication is now ordinarily accessed electronically in practice. The Bill therefore does not introduce a fundamentally new method of public notice, rather, it modernises and streamlines publication while maintaining the same legal effect and preserving the existing land title recording process
- b. Has any consideration been given to requiring the agency to give direct written notification to registered holders, as set out in the mineral tenure register, within a defined period of a declaration being made? If not, why?

Answer:

- The policy approach taken in the Bill is to modernise routine publication requirements by using the Agency website, while preserving the legally significant land recording function through the Registrar-General and strengthening earlier direct notice requirements elsewhere in the process. In that sense, the Bill is not premised on final declarations coming without earlier engagement, it is premised on affected parties being brought into the process at the relevant earlier stages, with formal publication and title recording then occurring once the final declaration is made.

Hearing not required for certain preliminary decisions

18. New section 41A provides that decisions under sections 21(1), 22(1), 23(2) and 25(1) are preliminary decisions and, as such, do not require the decisionmaker to afford an affected person an opportunity to be heard. Section 25(1) provides that the Council must, before the end of the assessment period, decide whether or not the place or object is of heritage

significance. MCA disputes the preliminary nature of section 25(1) decisions noting that a positive finding triggers public consultation, creates the conditions for a provisional declaration and shapes every subsequent step in the assessment process. MCA further noted that a project team cannot properly assess regulatory risk against a heritage risk event they have no advance notice of.

a. Can you explain why a section 25(1) decision is considered to be preliminary?

Answer:

- A section 25(1) decision is preliminary because, under the Bill, it is no longer tied to an automatic provisional declaration. That change is critical. Under the current Act, a positive section 25 finding automatically lead to a provisional declaration and immediate effects on land use. The Bill removes that linkage by repealing section 37 and centralising provisional declarations under the Minister's discretionary, risk-based power in section 36. As a result, a section 25(1) decision now serves as an intermediate assessment step that informs consultation and later recommendation and declaration decisions, but does not itself alter rights. That is why the Bill treats it as preliminary. The policy intent is to improve certainty for owners and interest holders by ensuring that property rights remain intact while the process moves through its consultative and decision-making stages.
- b. Given the processes a determination of heritage significance triggers, can you explain why the Heritage Council is not required to give written notice to the owner and any registered holder of a mineral title or exploration licence whose tenure covers the relevant area and invite written submissions within 14 days before making its determination?

Answer:

- The Bill adopts a structured approach to participation. It distinguishes between early preliminary decisions and the later stage at which public consultation is intended to occur with fuller information, including the statement of heritage value and the broader question of whether the place or object should be conserved. The policy position is that procedural fairness should be concentrated at that substantive consultation stage, rather than multiplied at each preliminary step. At the same time, the Bill strengthens earlier notice requirements by requiring notice to owners when a nomination is accepted, when the Council initiates an assessment, and when the assessment period is extended. The model is therefore not one of no notice followed by a final decision. It is one of earlier notice, followed by targeted participation at the stage where submissions can most meaningfully inform the outcome.

Declaration of protected class of places or objects

19. Consistent with existing section 34, the Bill amends section 50 to require the Minister to be satisfied that a place or object is of heritage significance 'and should be conserved' before deciding to permanently declare a place or object as a heritage place or object. The NLC questioned the inclusion of the phrase 'and should be conserved' given that it is not an objective question and it is unclear what standard such a determination should be based on.

a. Where a class of places or objects is assessed by a heritage consultant to be a category that has significant heritage value, can you clarify why a determination is also required that it should be conserved?

Answer:

- Because significance and conservation are related but distinct evaluative questions. Significance addresses whether the place, object or class has heritage value. The additional requirement that it "should be conserved" introduces the further judgment as to whether formal statutory protection through declaration is the appropriate

conservation response at the Territory level. That is consistent with the broader declaration framework in the Act. In that sense, the Bill is not saying significance is insufficient. It is making clear that declaration is a distinct legal outcome that requires a further evaluative step about whether conservation through declaration is warranted.

- b. Under what circumstances might the Minister determine that a place or object of heritage significance should not be conserved?

Answer:

- That would depend on individual circumstances for each place or object, but the distinction recognises that significance alone does not necessarily determine the appropriate statutory response. There may be circumstances where heritage significance is acknowledged, but formal declaration is not the appropriate conservation mechanism because the heritage values are already adequately managed through another arrangement, or because a different conservation response is more suitable for the class in question. For example, the Minister may decide that a place should not be declared a heritage place because heritage protection may exist through national heritage listing or other mechanisms deemed more appropriate such as an Indigenous Protected Area or national park. The Bill preserves this evaluative role for the Minister.

Application for Approval and Notice of decision

20. The Bill amends section 72 to clarify consent requirements for work applications and to strengthen consultation obligations. In relation to heritage objects, the Explanatory Statement points out that the applicant must obtain consent from the owner of the land where the object is located, and provide evidence that they have made 'best endeavours to identify and consult with the owner of the object.'

- a. Can you provide examples of what might be considered to be evidence that an applicant has made 'best endeavours' to identify and consult with the owner of an object?

Answer:

- The requirement is directed to genuine and reasonable efforts that will be objectively assessed on the evidence. Depending on the circumstances, evidence of best endeavours may include contacting persons or bodies reasonably believed to hold relevant information, writing to potential object owners or representatives, following up responses where necessary, and documenting the steps taken and any responses received. For an Aboriginal object, that might include approaching the relevant Land Council or other recognised agency to identify who may have a traditional right to possess the object, and documenting that consultation effort. The purpose is to ensure the decisionmaker can see that reasonable efforts have been made to identify and consult the relevant person without turning the process into a separate adjudication about ownership.
- b. Has any consideration been given to including examples of best endeavours in the Explanatory Statement or the Bill? If not, will such be included in other guidance materials?

Answer:

- The Act and Explanatory Statement set the statutory structure and policy intent. Practical examples of what best endeavours may involve are best placed in guidance material because they can be adapted to different factual circumstances and updated over time if practice develops.

21. The Land Councils noted that the combined effect of the proposed amendments to sections 72 and 77 and Schedules 1 and 2 essentially limits the rights of the owners of heritage objects. In particular, it was noted that pursuant to proposed section 77, the owner of a heritage object is neither notified that a work approval relating to a heritage object has been issued, nor entitled to seek a review of the decision.

- a. Can you explain why there is no requirement for the owner of a heritage object to be notified when a work approval has been issued?

Answer:

- Standing for merits review is aligned with the legal structure of the decision. For objects on private land that is not Aboriginal land, the work approval directly concerns whether physical works may occur on that land. Therefore, the legal rights of the owner of the land are primarily engaged. The interests of object owners, including traditional owners, are recognised and protected through the mandatory consultation requirements in Section 72. This ensures their cultural interests are considered by the decisionmaker without conflating them with the legal rights tied to land ownership. If the object is located in Aboriginal land, then Land Trusts and Land Councils, as legal owners of land on behalf of traditional owners, have standing.

- b. Why is the the owner of a heritage object not entitled to seek a review regarding the issue of work approval relating to the object?

Answer:

- The Bill refines standing so that review rights align with the structure of the decision being made. In the case of work approvals for heritage objects on private land that is not Aboriginal land, the decision is a decision about works occurring on land, and so the applicant and landowner are the persons whose legal rights are most directly engaged by the approval itself. The Bill does not remove recognition of Aboriginal or object owner interests. Rather, it recognises those interests through the consultation requirement in section 72, which requires evidence that the person who owns, or may have a traditional right to possess, the object has been consulted about its protection and conservation. The policy intent is therefore not to deny those interests, but to distinguish between consultation rights tied to the object and review rights tied to the legal structure of the land-based decision. That reflects the Bill's broader clarification between legal land ownership and cultural or traditional interests in heritage objects, particularly in relation to objects on private land.

22. While it was acknowledged that the proposed amendments to sections 72 and 77 clarify consent requirements by distinguishing between the owner of the land and the owner of the object, submitters noted that the legislation does not define how ownership of an Aboriginal heritage object is to be determined. This issue was identified as particularly relevant in areas where Native Title is contested or where multiple groups or individuals assert cultural authority.

- a. What statutory or policy guidance will be provided to applicants in this regard?

Answer:

- The Bill does not attempt to codify a comprehensive legal test for contested ownership of Aboriginal heritage objects, because that would be difficult to do exhaustively in the Act and could create further complexity. Instead, the statutory requirement is that applicants make best endeavours to identify and consult the person who owns, or may have a traditional right to possess, the object. The practical detail of how to approach that task is more appropriately addressed through guidance. That guidance can assist applicants as to reasonable inquiry steps, relevant sources of information and how to document consultation efforts, while preserving flexibility to deal with contested or complex circumstances case by case. The Bill's purpose here is to ensure that cultural interests are identified and

considered, not to create a separate adjudication regime for object ownership disputes.

23. The Tiwi and Northern Land Councils raised concerns that there would seem to be an expectation that the Land Councils will assist applicants to identify owners of objects. It was further noted that, pursuant to section 23(2) of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), the Land Councils require Ministerial approval before performing functions that have been conferred on them by a law of the Northern Territory.

a. What is the role of the Land Councils in relation to the identification of owners of heritage objects?

Answer:

- The Bill does not confer, purport to confer or propose to confer, a formal statutory function on Land Councils under the Act. Therefore, the requirement for Commonwealth Ministerial approval under section 23(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (ALRA) is not engaged by the Bill. The obligation to identify owners remains with the applicant. While an applicant may seek information from a Land Council as a practical resource, this is a matter of administrative practice rather than a mandated function.

b. What, if any, consideration has been given to the potential resourcing implications this may have for Land Councils?

Answer:

- Because the Bill does not impose a statutory function on Land Councils to identify object owners, it is not premised on Land Councils carrying out that work as a mandatory part of the work application process. The statutory responsibility remains with the applicant. To the extent an applicant chooses to approach a Land Council as a practical source of information, that is a matter of circumstance and practice rather than a function imposed by the Bill itself.

c. Can you clarify the operation of section 23(2) of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), and the extent to which it is applicable in relation to the Heritage Amendment Bill?

Answer:

- The key point is that the Bill does not confer, purport to confer, or propose to confer, a compulsory statutory function on Land Councils to identify object owners. For that reason, section 23(2) of the ALRA is not engaged by the Bill in the way the Land Councils suggest. A practical request made by an applicant to a Land Council for information is not the same as the Bill conferring a function on the Land Council under a Territory law.

Membership of Heritage Council

24. Submitters raised a number of concerns with the proposed changes to the governance structure of the Heritage Council which replaces the existing prescriptive representative model with a merits-based appointment model while preserving Aboriginal representation requirements.

a. To enhance cultural credibility of Heritage Council determinations, was any consideration given to increasing the number of Council members of Aboriginal descent? If not, why?

Answer:

- The policy balance struck in the Bill is between maintaining Aboriginal representation as a structural feature of the Council and ensuring that the Council can collectively

cover the range of expertise needed to perform its functions and be convened reliably. The reform is directed to practical governance issues that have arisen under the current structure, including appointment delays, conflicts of interest and difficulty achieving quorum, while preserving Aboriginal representation within the new model.

- b. Can you clarify for the Committee why the qualification 'as far as practicable' is still considered necessary in relation to the appointment of at least 2 members of Aboriginal descent?

Answer:

- The qualification recognises that appointments must occur within a practical environment. The Act needs to allow the Council to be constituted and operate in circumstances where timing, candidate availability, willingness to serve, or other practical appointment issues may arise. The phrase preserves a clear legislative expectation of Aboriginal representation, while also ensuring that the Council can still be constituted if practical difficulties arise in filling every position at a given point in time.

- c. As suggested by the NLC, was any consideration given to requiring that, in addition to Aboriginal descent, the criteria for Aboriginal representatives should include expertise in Aboriginal heritage or Aboriginal tradition? If not, why?

Answer:

- The Bill adopts an overall skills, knowledge and experience model for all members rather than prescribing multiple separate categories or qualifications for particular positions. That reflects the policy shift away from the current prescriptive representative model. The expectation is that, taken as a whole, appointments will ensure that the Council has the expertise necessary to discharge its functions, including in relation to Aboriginal heritage, while preserving Aboriginal representation as far as practicable. The Bill's approach is therefore to achieve capability through the overall composition of the Council.

25. A number of the Land Councils expressed the view that the current requirement to appoint a representative of the Aboriginal Areas Protection Authority (AAPA) should be retained.

- a. Taking into consideration the overlap between sacred sites and Aboriginal archaeological places and objects, and the move towards a merits-based appointment model, can you explain why it was decided to remove the requirement for the Council to include a representative from AAPA?

Answer:

- The governance reform is directed to replacing fixed representative positions with a council appointed on the basis of appropriate skills, knowledge and experience. That is intended to improve flexibility, reduce structural conflicts of interest and support reliable decision-making. It does not prevent a person with AAPA experience or relevant expertise from being appointed, but it removes the mandatory representational seat in favour of the broader merits-based structure. It is noted that AAPA did not raise this as an issue when the bill was circulated.

Delegations by Minister and CEO

26. The MCA and NLC raised concerns that the Bill amends section 146(1) to provide that, in addition to the CEO, the Minister may delegate any of their powers and functions 'to a person'.

- a. In drafting the Bill, was any consideration given to providing that, as a bare minimum, the Minister may only delegate their powers and functions to 'a suitably qualified and experienced person'? If not, why?

Answer:

The Bill permits delegation to a person (i.e. another Minister or the CEO), while expressly preventing delegation to the Council or a Council member. The policy intent is to expand administrative flexibility and allow decisions to be made at the appropriate level while preserving the independence of the Council. That said, the delegation power is not unconstrained. It remains subject to ordinary public law principles that govern delegations, including that the power must be exercised lawfully, for the purposes of the Act, and to an appropriate person in the circumstances. The Explanatory Statement also notes that the amendment is consistent with similar delegation provisions in other legislation and is intended to cut red tape and enable faster decisions at the appropriate level.