



NORTHERN LAND COUNCIL

**Submission to the Northern Territory Government
Minister For Lands, Planning and the Environment
on the
*Northern Territory Aboriginal Sacred Sites Legislation
Amendment Bill 2025***

4 April 2025

ROLE OF THE NORTHERN LAND COUNCIL

The Northern Land Council (**NLC**) is an independent statutory authority of the Commonwealth incorporated under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and a Native Title Representative Body recognised under the *Native Title Act 1993* (Cth) (**NTA**). The functions of the NLC include assisting Aboriginals in the protection of sacred sites on land in its area (whether or not Aboriginal land) (*Land Rights Act* s 23(3)(ba)).

A key function of the NLC is to express the wishes and protect the interests of Aboriginal people who are traditional Aboriginal owners under the *Land Rights Act* or native title holders under the NTA (collectively referred to as **Traditional Owners**) throughout its region. The NLC has statutory functions under s 23(1)(ba) of the *Land Rights Act* to assist custodians and Traditional Owners to protect sacred sites.

The NLC's vision is a Northern Territory in which the rights and responsibilities of Traditional Owners are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas and intellectual property.

INTRODUCTION

The NLC welcomes the opportunity to comment on the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025* published on 27 March 2025 (the **Bill**), which proposes amendments to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (the **Act**).

Timeframe for consideration

The NLC is concerned that the timeframe given in the call for submissions does not allow for consultation with Traditional Owners, or those who make up the Northern Territory more broadly. The Bill and its Explanatory Statement were introduced on Thursday 27 March 2025, providing constituents just one week to prepare submissions before the 4 April 2025 deadline.¹ Furthermore, a public briefing was scheduled on 1 April 2025, three days prior to the submission deadline. The expedited timeframe plainly limits the opportunity for meaningful consultation and scrutiny of the proposed Bill.

In the time available to prepare the comments below, it has not been possible for the NLC to conduct any substantive consultations with Traditional Owners or the members of the NLC's Full Council about the Bill. To this point, this submission includes quotes and photographs from a protest organised by the NLC Women's Rangers in response to the announced changes to the Act.

Legislative objects

The Act was enacted pursuant to the power conferred on the Legislative Assembly of the Northern Territory by s 73(1)(a) of the *Land Rights Act*. By s 73(1)(a), 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 –

laws providing for the protection of, and the prevention of desecration of, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and, in particular, laws regulating or authorising 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.

[...]

but any such law has effect to the extent only that it is capable of operating concurrently with the laws of the Commonwealth, and, in particular, with [the *Land Rights Act*] (emphasis added)

We will refer to s 73(1)(a) later in this submission, however it does bear on the present discussion of the timeframe for public scrutiny and comment on the Bill. In the days between 27 March 2025 and today, it is unclear how the wishes of Aboriginal people could be identified and communicated to the Legislative Assembly and consequently how any provision in this Bill could be said to 'take into account' those wishes. That issue is fundamental to the proper exercise of the power conferred by the Commonwealth on the Legislative Assembly of the Northern Territory.

There appears to have been some consultation with officers of the Aboriginal Areas Protection **Authority** during the course of preparing the Bill, which the NLC welcomes. However, to the NLC's knowledge, there has not been substantive consultation with the Land Councils, who have been given all of six working days to ascertain the wishes of Traditional Owners, which is an impossible task. For this reason, the NLC strongly recommends the timeframe for consultation be extended to allow time

¹ **Explanatory Statement**, *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025* (NT).

for the necessary consultations to occur. That extension is in keeping with the express intent of s 73(1)(a) of the *Land Rights Act* by which the Commonwealth conferred on the Legislative Assembly of the Northern Territory power to make laws such as the Act.

THE NLC'S STANCE ON THE BILL AND KEY PRINCIPLES

The Explanatory Statement discloses that the primary objectives of the Bill are 'to ensure the Act and the Regulation are both contemporary and remains effective in achieving its purpose' and to 'improve protections for sacred sites, reduce red tape and improve certainty and processes for economic development, and ways in which the Aboriginal Areas Protection Authority can become more efficient' (the **Primary Objectives**).²

The NLC supports the Primary Objectives but notes that they are incomplete in one fundamental respect; as set out above, s 73(1)(a) of the *Land Rights Act* (among other matters) requires that the proposed changes in the Bill must:

- (1) provide for the protection of sites by reference to the wishes of Aboriginal persons; and
- (2) be capable of operating concurrently with the *Land Rights Act*.

Those elements do not appear in the Primary Objectives nor in the Bill itself. That leaves open the interpretation that the Legislative Assembly of the Northern Territory – should it pass the Bill into law – would not be acting in accordance with the power conferred upon it by the Commonwealth. To cure that defect, the NLC considers that the Act must embed requirements for consultation with and obtaining the consent of custodians as outlined in this submission. Moreover, consultation with Traditional Owners regarding sacred sites cannot be considered red-tape. Rather, to failing to do so means cutting corners.

The NLC maintains that its vision for the NT's economic development is inclusive, sustainable and one that ensures that Traditional Owners are at the forefront of informed decision-making on matters impacting sacred sites and Country. Free, prior and informed consent is fundamental to this vision.

² the Explanatory Statement, 1.

COMMENTS ON THE DRAFT BILL

The NLC presents the following recommendations to in the hope that the Northern Territory Government will amend the Bill to take into account the wishes of Traditional Owners, who will be directly impacted by the amendments.

1. Review procedure

- 1.1. The Legislative Scrutiny Committee would be aware that Part 3, Div 3 of the Act creates a procedure by which “a person who applied under section 19B for an Authority Certificate” (s 30) may apply to the Minister for a review of a decision, action or failure of the Authority.
- 1.2. The Act does not give any standing at all to custodians to seek Ministerial review of the Authority’s decisions, actions or failures. The Bill should be amended to give custodians that standing for the reasons that follow.
 - (a) It is plainly unfair and inequitable to give review rights to one category of persons directly affected by the Authority’s decisions, actions or failures, but not another.
 - (b) The Bill introduces new categories of decisions, actions or failures of the Authority which will be reviewable. Nothing in the Bill or accompanying materials addresses why those new categories should be reviewable by applicants for Authority Certificates and not custodians.
 - (c) Custodians are expressly defined in the Act by reference to their membership of the Aboriginal race of Australia.

Recommendation 1: The NLC strongly recommends that custodians be afforded the same rights of review under s 30 of the Act as is afforded to applicants.

2. Sections 5 – 7: Appointment and termination of members

- 2.1. The NLC understands, from the Explanatory Statement and the Public Hearing conducted on 1 April 2025, that the intent of these sections is to formalise existing practice whereby the Minister appoints 2 of the 12 members of the Authority.
- 2.2. As noted above, the time allowed for comment has not afforded the NLC opportunity to consult with the NLC Full Council to take their views on the proposed amendments. Consequently, the NLC is unable to provide a conclusive view on these amendments in respect of appointment and termination of the members of the Authority.
- 2.3. A criteria for independent members must be developed and included in the legislation to ensure that any Ministerial appointment has the relevant skills, knowledge, experience and *lived experience of sacred sites*, to be an appropriate member of the Board of the Authority.

- 2.4. This criteria should be developed in further consultation with Traditional Owners and the Board of the Authority.

Recommendation 2: The NLC strongly recommends that the Legislative Committee defer introducing these amendments until such time as members of the Land Councils have been consulted and had opportunity to express their views on these amendments, noting that the vast majority of members of the Authority are appointed on recommendation of the Land Council. It is thus their interests most directly affected.

3. Sections 24A, 24B and 25: Transfer of Authority Certificates

- 3.1. The NLC is open to the proposal that Authority Certificates be transferrable as a means of improving process efficiencies. However, further refinement to the current drafting is required to ensure the proposed amendments are consistent with the objects of the Act and s 73(1) of the *Land Rights Act*.
- 3.2. The NLC recommends the proposed process for transferability be refined to require the consent of the custodians to any proposed transfer and to afford the Authority discretion as to whether to transfer a certificate. These changes must be enshrined in the Bill.
- 3.3. The NLC considers that the proposed process for transfer of Authority Certificates should be refined in the following key areas:
- (a) consultation with custodians
 - (b) length of operation
 - (c) discretion of the Authority
 - (d) applicability to certificates issued under s 22(1)(b)

Our comments in each regard are as follows.

(a) Consultation with custodians

- 3.4. In order to ensure the Bill takes the wishes of Aboriginal persons into account as required by s 73(1) of the *Land Rights Act*, the NLC considers that any transferability must operate as follows:
- *for existing certificates* – any transfer is subject to further consultation with and obtaining the consent of the custodians.
 - *for future certificates* – may be transferable, subject to custodians agreeing to the transferability of an Authority Certificate in the course of consultations for the issue of a certificate under s 19F or on the basis of a s 22(1)(b) agreement.

(b) Length of operation

- 3.5. The amendments as presently drafted allow for an Authority Certificate to be transferable in perpetuity. Such a situation is problematic as the relevant conditions may become obsolete or inapplicable depending on the development of the subject-project. Moreover, further information relevant to the protection of sites may come to light over time, meaning the recorded conditions are no longer adequate or relevant.

- 3.6. The Juukan Gorge inquiry is an illustrative example: in that case, an important Aboriginal site was destroyed in 2020 as Rio Tinto had permission to do so pursuant to a permit issued in 2013. Since that time, more information had come to light as to the significance of the site.³ As a result of the damage, the Western Australian government amended the relevant legislation in 2023 to allow permits to be varied where ‘new information’ comes to light.⁴ Such a course is appropriate here.
- 3.7. The current wording of ss 24A and 24B does not allow scope for amending transferred Authority Certificates. This creates a risk to the incoming transferee, who may inherit an out-of-date certificate and complete works in accordance with incorrect information. This leaves a situation where transferees may complete works in good faith which nevertheless cause damage or interference. This will leave transferees vulnerable to prosecution under the *Land Rights Act* and/or further penalty under Northern Territory and Commonwealth heritage legislation.
- 3.8. Noting that such a situation is contrary to the interests both of the Traditional Owners and transferees, the NLC strongly recommends the Bill be amended to prevent such a situation.

(c) Discretion of the Authority

- 3.9. The current wording of s 24A(3) requires that the Authority must issue a new Authority Certificate to a transferee upon receiving an application meeting the requirements of s 24A(2).
- 3.10. There are many reasons why the Authority should instead be afforded discretion as to whether to issue a new Authority Certificate, such as that the proposed transferee:
- is insolvent or otherwise unable to undertake the works the subject of the certificate for financial or other reasons;
 - has previously been convicted of an offence under ss 33-35 of the Act or s 69 of the *Land Rights Act*, and it is likely they may offend again; or
 - has a history of poor dealings with the custodians of the sites the subject of the Authority Certificate.
- 3.11. As a statutory body, any decision by the Authority will need to be made in accordance with administrative decision-making principles and the objects of the Act. The NLC considers these factors should give proposed transferees comfort that the Authority will not refuse a proposed transfer arbitrarily.
- 3.12. Should the Northern Territory consider there is need to provide transferee’s further comfort in this regard, an enumerated list of factors relevant to the exercise of the Authority’s discretion could be added. The NLC would welcome the opportunity to provide input on any further drafting in that regard.

³ For background see, eg, Peter Ker, ‘The Inside Story of how Juukan Gorge was Lost’, *Australian Financial Review* (online), <<https://www.afr.com/companies/mining/the-inside-story-of-how-juukan-gorge-was-lost-20201210-p56mih>>.

⁴ See *Aboriginal Heritage Act 1972* (WA) s 18(6)(b).

(d) Certificates issued under s 22(1)(b)

3.13. It is unclear on the current drafting how transferability will operate with respect to Authority Certificates issued on the basis that the Authority is satisfied that an agreement has been reached with the custodians and the applicant: see s 22(1)(b) of the Act.

3.14. Noting that, in the case of agreements under this section:

- the Authority is likely not party to any such agreement;
- the terms of any such agreement may be confidential; and
- the scope of agreements under this section may be broader than the conditions listed on a Certificate contemplated by s 22(1)(a).

It would seem likely that an alternative regime for transferability is required when the proposed transfer relates to an Authority Certificate issued pursuant to s 22(1)(b).

3.15. The NLC strongly recommends that further consultation and consideration is undertaken prior to introducing transferability to Certificates issued under s 22(1)(b). As a first step, it would seem necessary for the Authority to be satisfied that the incoming transferee has assumed all the obligations under an agreement issued under s 22(1)(b) prior to such a Certificate being transferred.

Recommendation 3: To address the points set out at [3.1] – [3.15], the NLC recommends that the regime for transferability be amended to instead read as follows:

Section 24A Transfer of Certificates

- (1) *A person (the **transferee**) may, with the consent of the person to whom an Authority Certificate was issued, apply to the Authority for the existing certificate to be transferred to the transferee.*
- (2) *An application under this section can only be made in respect of a certificate issued by the Authority in accordance with s 23(1)(a).*
- (3) *The application must be:*
 - (a) *in a form approved by the Authority; and*
 - (b) *accompanied by the prescribed fee.*
- (3) *After receiving the application, the Authority may issue a new Authority Certificate to the transferee if the relevant custodians of the sacred sites the subject of the Authority Certificate have been consulted and provided their consent to the Authority Certificate being transferable.*
- (4) *The new Authority Certificate:*
 - (a) *must be issued in respect of the same land and work or use of that land that were the subject of the existing Certificate;*
 - (b) *may be updated to include new or updated conditions based on any new information known to the Authority relevant to the subject land and the works or use of land the subject of the Certificate.*

4. Section 24B: Recorded parties for certificate

- 4.1. The proposed amendments in relation to Recorded Parties under s 24B appear to replicate those proposed in relation to the transferability of certificates under s 24A. Accordingly, the NLC adopts its submissions above in respect of s 24B with the necessary adaptations.
- 4.2. The NLC assumes that the distinction between these interrelated sections is to address circumstances as follows:
 - (a) *Section 24A Transferability* – where a new proponent acquires an existing project, ie ownership of a project passes from one proponent to another.
 - (b) *Section 24B Recorded Parties* – where a new proponent is added to an existing project, or where a sub-contractor or other contracting party is added to an existing project.
- 4.3. However, the precise distinction between ss 24A and B is unclear on the face of the Act or by reference to the Explanatory Statement. This may lead to confusion for proponents as to which is relevant applicable process.

Recommendation 4: The NLC recommends that the Explanatory Statement be amended to provide further clarification on the distinction between the uses of ss 24A and B. In addition, or alternatively, the Bill could be updated to include drafting notes setting out examples of when s 24A versus B may apply.

5. Part IVA: Enforceable Undertakings

- 5.1. The NLC considers an enforceable undertaking regime could provide a further regulatory tool for the protection of sacred sites, and that by providing an alternative to prosecution, the regime may equip the Authority with a quicker, more direct and satisfactory outcome for custodians than prosecution may achieve. In particular, the NLC welcomes the introduction of a regime which allows for broader remedies than mere pecuniary penalties, such as through remediation orders.
- 5.2. The NLC considers that the introduction of relatively minor amendments covering the following key areas would ensure the proposed regime meets the Primary Objectives and requirements of s 73(1)(a) of the *Land Rights Act*:
 - (a) limiting the scope of the regime to remove a contravention of s 35 desecration;
 - (b) introduction of consultation requirements; and
 - (c) directing the scope of the Authority's consideration of whether to accept an enforceable undertaking.

(a) *Scope of the regime – s 35 desecration*
- 5.3. Due to the seriousness of the harm involved, the NLC does not consider an enforceable undertaking is an appropriate remedy for desecration of a site under s 35 of the Act. The following factors necessitate the inappropriateness of an enforceable undertaking to address this type of offending:
 - (a) the seriousness of the harm involved in desecration offending; and

(b) that by s 39C(5), the giving of an enforceable undertaking does not constitute an admission of guilt by the undertaker

- 5.4. In such cases, the admission of guilt by the offender and providing an opportunity for those harmed to be heard by the Court system are necessary to remedy the harm done. For this reason, the NLC considers contraventions of s 35 should be removed from the ambit of the Enforceable Undertaking regime.

Recommendation 5: The NLC recommends that the Northern Territory introduce a graded system, such as in Part 11 of the *Work Health Safety (National Uniform Legislation) Act 2011* (NT), which excludes desecration of a site under s 35 of the Act from being dealt with by way of an enforceable undertaking.

(b) Consultation requirements

- 5.5. As currently drafted, there is no requirement by the Authority to consult with custodians prior to accepting an undertaking. The NLC considers this would contravene the requirements of s 73(1)(a) of the *Land Rights Act*.

(c) The scope of the Authority's consideration under s 39C(4)

- 5.6. As presently drafted, the scope of the Authority's consideration under s 39C(4) is potentially unlimited. This introduces a risk that the Authority will consider any number of potentially irrelevant factors when deciding whether to accept an Enforceable Undertaking. The considerations listed under s 39(3) should be tailored to the objects of the Act so as to prevent the Authority considering irrelevancies.
- 5.7. Moreover, the list of considerations set out at (4)(a)-(e) do not include any consideration of the wishes of the affected custodians. Such a requirement should necessarily be included.

Recommendation 6: The NLC recommends s 39C be amended as follows in order to address the points set out at [5.1] – [5.7] above:

39C Authority may accept enforceable undertaking

- (1) *The Authority may accept an enforceable undertaking given by a person in connection with an alleged contravention of:*
 - (a) *This Act; or*
 - (b) *A term or condition of an Authority Certificate*
- (2) *An enforceable undertaking cannot be accepted for a contravention of section 35, desecration.*
- (3) *Before accepting an enforceable undertaking, the Authority must consult with the custodians of the sites to which the proposed undertaking relates.*
- (4) *The Authority must consider the following before accepting the enforceable undertaking:*
 - (a) *The views of the custodians and any affected Aboriginal persons;*
 - (b) *The nature and gravity of the conduct constituting the alleged contravention;*
 - (c) *If applicable – the maximum penalty provided for the alleged contravention;*
 - (d) *The benefits of the proposed undertaking and the public interest;*
 - (e) *Any other factor relevant to the objects of this Act.*

GRASSROOTS RESPONSE

In a 24 March radio interview, Minister for Lands, Planning and Environment Joshua Burgoyne announced plans to amend the Sacred Sites Act. Upon hearing the news, the NLC's Women's Rangers took to the streets of Katherine in protest. Those present cited a lack of consultation and regard for Traditional Owner interest.

Item 1: Quotes from protest attendees

"The Sacred Sites Act is a piece of legislation designed to protect our sacred sites. It's for the best interest of Aboriginal people in the Northern Territory, it should be standard practice for the government to engage us and consult with us if there to be any changes to the Sacred Sites Act. We haven't been consulted. This directly affects us, our way of life, our livelihoods, our spiritual connections to country."

Acacia Nalyarri Lewis
Wardaman Assistant Ranger Coordinator

"Women care for the sacred sites day in and day out. They're out in the bush taking care of our sacred sites, our song lines, taking care of business. They also tell their stories to the children. They [sacred sites] have to be kept for future generations so these sacred sites need to be protected."

Joy Cardona
Member for Daly River
NLC Executive Council

"We don't want government to take over our sites because it really means something to indigenous people and it's a story that we want to share all the time to our mothers, to our kids, to our next generations."

Verona Huddleston
Wagiman Ranger

"I'm just making an inquiry about sacred sites, especially the woman that we need to protect our sacred sites. And it's our next generation that we're handing it over, and it's been here for a while when we had our elders here in this country. And they need, like for us, we need to protect our sacred site, and it's really good for our next generation to keep on doing it for us."

Daphne Huddleston
Wagiman Ranger

Item 2: Photos from Protest

