



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

Chair
Legislative Scrutiny Committee
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LEGISLATIVE SCRUTINY COMMITTEE INQUIRY INTO THE HERITAGE AMENDMENT BILL 2026

About the Northern Land Council

The Northern Land Council (**NLC**) was established in 1973. Following the enactment of *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (Land Rights Act)*, the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas. The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law, and sets out the functions and responsibilities of the land councils.

The NLC is also a Native Title Representative Body under the *Native Title Act 1993 (Cth) (Native Title Act)*, with main functions relating to progressing native title claims, consulting with native title holders, negotiating Indigenous Land Use Agreements (**ILUAs**), and resolving disputes about native title.

Approximately 30% of the NT population is Aboriginal. Over 50% of the NT's land mass is owned by Traditional Owners under the Land Rights Act (**Aboriginal Land**) (including around 85% of its coastline), with much of the remainder being subject to native title interests. Hence, Traditional Owners have an enormous stake in the economic development of the NT and should be at the forefront of any policy development.

A significant function of the NLC is to express the wishes and protect the interests of Aboriginal people who are Traditional Owners under the Land Rights Act or native title holders under the Native Title Act (collectively referred to as **Traditional Owners**) throughout its region. The NLC represents more than 36,000 Aboriginal people.

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.

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Introductory remarks

The Northern Land Council (**NLC**) welcomes the opportunity to provide input to the Legislative Scrutiny **Committee** inquiry into the *Heritage Amendment Bill 2026*. Cultural heritage is a living and vibrant part of Aboriginal society, a key focus of NLC is to support Traditional Owners and custodians across our region to have their cultural heritage recognised and protected.

Generally, the NLC is supportive of the modernisation of the *Heritage Act 2011 (NT)* that the Bill is seeking to deliver. For a long time, the Northern **Territory** Government's legislation has lagged behind other jurisdictions. In light of this, the comments the NLC provides in this submission are seeking to suggest practical improvements for the Scrutiny Committee to consider.

As explained in greater detail below, the NLC recommends that the Committee amend the Bill because, in certain places, the Bill has not given sufficient regard to the rights and liberties of individuals or had sufficient regard to Aboriginal tradition. There are also sections where the bill allows delegation of legislation that is not appropriate. Unless otherwise defined, terms used in this Submission have the same meaning as those given in the Bill.

General comments

As mentioned above, the NLC is supportive of the modernisation of the Heritage Act. It is the NLC's view that cultural heritage is a living and vibrant part of Aboriginal society which is ongoing. The NLC observes that there are inherent limitations in the application of an Act that only protects "historical" heritage.

There is a requirement under s23(2) of the *Aboriginal Land Rights Act 1976 (ALRA)* that Ministerial consent must be sought before any functions are conferred on the Land Council by a law of the territory. The NLC is concerned that this requirement has not been met in the preparation of this Bill. The requirement to consult with the owner of archaeological objects, contained in the Bill will involve the Land Councils.

There has not been a sufficient consultation process with Land Councils prior to this Bill being introduced – particularly in relation to the consultation requirements which have been added to the legislation which the NLC anticipates will be resource intensive for the NLC.

Definition of "early contact period"

In relation to the changes to the definitions (s4 of the Bill / s4 of the Act), the NLC is concerned about adding temporal references to the definitions of heritage. In particular, the 'early contact period' which refers to "the period during which Aboriginal peoples of the Territory first interacted with people from outside of Australia". The NLC has not been able to find any heritage legislation in other jurisdictions that include a temporal reference and limits the protection of heritage in this way.

Research suggests that the earliest known interactions with Macassan traders date to approximately the 18th century, and it should be noted this area of study is subject to ongoing research and investigation. As the definition is currently drafted, there is a risk that would mean that heritage from the early contact

period between European settlers and Aboriginal people would not be protected because this falls outside the “first” interactions between Aboriginal people and people outside of Australia (i.e. the Macassans).

Further, despite the intention set out in the Explanatory Statement, we are concerned that this definition will set one date for the whole of the Territory. Each Aboriginal estate group within the Territory had different periods of interactions with outsiders and this should be clarified in the legislation.

To address this issue the NLC proposes that the definition of ‘early contact period’ is updated to include the following wording, or words to a similar effect, “for each group of Aboriginal people, the period during which that group of Aboriginal people interacted with people from outside of Australia”.

Finally, further clarity needs to be included regarding when the ‘early contact period’ will end – this is critical to understanding what is protected under the Bill.

The Committee has functions to inquire and report on whether the Bill is unambiguous and is drafted in a sufficiently clear and precise way. For all the reasons set out above, the NLC considers these definitions are ambiguous and not drafted clearly.

Section 7 - Definition of relic

The NLC is concerned about the carve out within the definition of relic of “an artefact or thing that is: made for sale” (see the proposed drafting for s9(3) of the Act / s7 of the Bill).

It is well established in the archaeological and anthropological records that trade occurred and that artefacts were produced or created for the purpose of trade or sale. This is also present in the ethnographic research that trading was, and remains, a key part of Aboriginal custom and tradition.

The Committee has functions to inquire and report on whether sufficient regard has been given to Aboriginal tradition. The carve out needs to be removed or more clearly defined in the Bill.

Section 8 - Discretion given to the Heritage Council

In relation to section 8 of the Bill and the new s21(2A) of the Act, we are concerned that 21(2A)(b) gives too large a discretion to the Heritage Council to refuse to accept a nomination / application. Particularly when there is no opportunity for this decision to be reviewed.

The NLC understands the rationale of the other changes to s21 of the Act, however 21(2A)(b) needs to be removed. This issue is compounded when you consider the changes that are also made to the composition of the Heritage Council.

Additional requirement for protected classes

In relation to s22 of the Bill and s50 of the Act, the NLC is concerned about the additional requirements to the types of classes of places or objects that are protected. The amendment requires them to be of heritage significance but *also* that it is a class that “should be conserved”. It is not clear to the NLC what standard this is based on as “should be conserved” is not an objective question.

In the NLC's view for a class of places or objects to be assessed by a heritage consultant to be a category that has significant heritage value is sufficient assessment. There should be no need to consider whether a category that is determined to have significant heritage value, should then also be conserved. The answer should be pre-determined by the first question.

The concept of "owner"

The Bill adds in references to "owner of the place", "owner of the land" and "owner of the object". There is no definition of "owner" in the Act, except in s67 which includes a particular definition and only for the purpose of Part 3.1. Some of the additional references added by this Bill are within that Part, others are outside that Part.

There should be greater clarity regarding the definition of "owner", particularly in relation to the "owner of the place" or the "owner of land".

Additional consultation requirements for the NLC

The NLC is generally supportive of the additional consultation requirement for applicants to notify the owner of an object, however it became apparent at the public hearing of the Committee's inquiry into the Bill, that there is an expectation that the Land Councils will be able to help facilitate these types of consultations between applicants and the owner of the object.

The NLC has only learnt about this new consultation requirement 5 business days ago, therefore, the NLC has not yet been able to determine the work and research that may be required for each request, as well as the resources to facilitate consultation across the NLC's vast region. However, our initial assessment is that it will be resource intensive to respond to such a request.

The NLC is also concerned that the research process takes time, particularly where this research needs to be accommodated alongside the NLC's other statutory functions, and the applicant may argue that they have used "best endeavours" by simply asking the NLC, and not be willing to wait until the research can be completed (perhaps over a number of months).

Change to the membership of the Heritage Council

The NLC is concerned about the changes to the Heritage Council. The proposed new drafting for s128 of the Act (see s27 of the Bill), gives a broad discretion to the Minister in appointing the membership. The NLC also considers that the Minister should try to ensure that more than two members of the council are of Aboriginal descent.

Delegation by the Minister

The NLC is very concerned about the changes set out in s30 of the Bill and s146 of the Act that give the Minister the power to delegate any of its powers to any person. At the bare minimum, this section needs to be amended to ensure that the delegate has appropriate skills, knowledge and experience to exercise the relevant powers and function that the Minister has delegated.

The Committee has functions to inquire and report on whether sufficient regard has been given to the institutions of Parliament, including the delegation of powers to appropriate persons. The NLC considers that the delegation proposed by the Bill is inappropriate.

To address the NLC proposes the following amendment to s146(1) – “The Minister may delegate any of the Minister’s powers and functions under the Act to a person who has appropriate skill, knowledge and experience to exercise the relevant powers and functions that has been delegated by the Minister”.

Recommendations

1. In relation to the new definition of ‘early contact period’
 - a. the Bill be amended to include the following wording within the definition for the ‘early contact period’ - “for each group of Aboriginal people, the period during which that group of Aboriginal people interacted with people from outside of Australia”; and
 - b. the Bill be amended to clarify when the ‘early contact period’ will end.
2. The Bill be amended to remove the exclusion in the definition of relic, specifically that it does not include “an artefact or thing that is made for sale”, or clarify that relic does include items that are produced for trade.
3. The Bill be amended to remove the current level of discretion given to the Heritage Council to refuse to accept a nomination.
4. The Bill be amended to remove Section 22 regarding additional requirements for protected classes.
5. That consultation take place with NLC regarding the additional consultation requirements introduced by the Bill.
6. The Bill be amended to clarify that the word “owner” is a reference to the Aboriginal people who should be consulted for a particular land, object or a heritage place.
7. The Bill should be amended to ensure that the Heritage Council membership includes more than two members of Aboriginal descent, in recognition of the importance of cultural heritage in the Northern Territory.
8. The Bill be amended to include the following wording regarding delegation by Minister and CEO –
“The Minister may delegate any of the Minister’s powers and functions under the Act to a person who has appropriate skill, knowledge and experience to exercise the relevant powers and functions that has been delegated by the Minister”.