Minerals Council of Australia
NORTHERN TERRITORY DIVISION

27 March 2026

Committee Secretariat
Legislative Scrutiny Committee
PO Box 3721
Darwin NT 0810
By email: LSC@nt.gov.au

Dear Committee Secretariat,

Heritage Amendment Bill 2026 Submission

The Minerals Council of Australia Northern Territory Division (MCA NT) welcomes the opportunity to provide comments on the *Heritage Amendment Bill 2026*.

MCA NT represents companies exploring, operating and providing services to the Northern Territory's minerals industry. As recognised in *Rebuilding the Economy: Northern Territory Economic Strategy*, mining is a core strength of the Territory economy. In 2023–24, the minerals industry delivered almost one third of own source revenue, contributing over $430 million in taxes and royalties and more than $4.3 billion in Territory spending across 770 local businesses.

For revenue to continue flowing, regulatory settings that support investment confidence must exist.

Mining is not just extraction. It is a connected investment chain from discovery through to processing, export and rehabilitation. Each stage depends on certainty in the stage before it. When certainty breaks, the investment case weakens and can fail. The provisions identified in this submission risk disrupting that chain at different stages of the project lifecycle.

With 21 projects in the pipeline representing $6.37 billion in potential investment and thousands of future jobs, the Territory is well placed to meet growing global demand for minerals and metals. Realising this opportunity requires coordinated policy settings and strategic infrastructure investment. It takes, on average, 16 years for mineral projects to move from discovery to production. Policy settings, including heritage frameworks, must deliver certainty and minimise delays that constrain project development and the infrastructure needed to unlock these regions.

The MCA NT supports strong heritage protections and the intent of the Bill. The Bill responds to legitimate court findings on procedural fairness gaps in the *Heritage Act 2011 (NT)*. MCA NT supports several of the resulting reforms, including the repeal of the automatic provisional declaration in section 37, the structured assessment timelines in section 23, and the revocation framework in section 39A.

However, MCA NT also recommends amendments in seven areas to ensure the settings are workable, timely and effective in practice:

1- Regulatory overlap
2- Heritage significance decisions
3- Assessment period extensions
4- Work approvals and identifying object owners
5- Delegation of heritage powers
6- Heritage Council composition
7- Notification of declarations

The concerns and recommendations below do not oppose the reform program. They identify specific operational and economic risks that, if unaddressed, will undermine investment confidence and delay economic participation outcomes for Traditional Owner communities across the Territory.

Detailed recommendations:

Regulatory overlap

Minerals companies operating in the Territory face two heritage approval pathways under the *Heritage Act 2011 (NT)* and the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT).* This in practice, means parallel assessments over the same project footprint, separate custodian identification processes that may reach different conclusions about who speaks for Country, separate approval requirements and separate ongoing management obligations.

There are also further regulatory considerations with the reforms that are being proposed to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* that are being led by the First Nations Heritage Protection Alliance. These Commonwealth reforms will legislate a model that identifies prescribed Traditional Owners for matters relating to the Commonwealth approvals regimes.

The economic cost of this duplication is not abstract.

Every additional process adds time, cost and a new point of regulatory uncertainty into the project timeline. For a junior explorer in the Territory working on a strict budget against a competitive global market for critical minerals capital, the cumulative burden of running two parallel statutory processes can redirect exploration spend to a jurisdiction with a cleaner regulatory interface.

The department's position, as understood from the Scrutiny Committee process, is that the relationship between the two Territory regimes is managed through policy, memoranda of understanding and inter-agency collaboration. That is not sufficient for investment decisions that depend on regulatory confidence.

This matters beyond industry convenience. The structured long-term economic participation agreements that define the best projects in the Territory, agreements like the arrangement between Arafura Rare Earths and the Central Land Council for the Nolans project north of Alice Springs which commits to 20 per cent Aboriginal employment over a 38-year mine life, depend on clear identification of who speaks for Country and a coherent single engagement process.

Where a company must navigate two separate statutory regimes in the Territory with different custodian identification approaches, the practical effects are harder to build as Traditional Owner organisations are asked to engage through multiple channels against stretched capacity.

The regime overlap does not just cost industry time. It will cost Traditional Owner communities the economic certainty they need to plan participation frameworks against a project lifecycle.

The Bill should be amended to include a provision clarifying the interaction between the *Heritage Act 2011 (NT)* and the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*, including the sequencing of the two regimes and the standing of Authority Clearance in a *Heritage Act 2011 (NT)* work approval assessment. If a statutory provision is not possible in this Bill, the government should commit to a formal protocol with statutory standing that provides certainty. Policy and MOUs are not enough. The Territory Coordinator, whose function under the *Territory Coordinator Act 2025 (NT)* is precisely to cut through multi-agency coordination problems on projects of economic significance, is the natural institutional home for administering such a protocol and should be explicitly empowered to do so.

Heritage significance decisions

Section 41A provides that the Heritage Council is not required to give any affected person an opportunity to be heard before making a heritage significance determination under section 25(1). The Explanatory Statement describes this as a preliminary decision. It is not. A positive section 25(1)

finding triggers public consultation, creates the conditions for a provisional declaration and shapes every subsequent step in the assessment.

A project team and its board are making capital commitment decisions throughout this period. They cannot properly assess regulatory risk against a heritage risk event they have no advance notice of.

The Bill was introduced because the Court found procedural fairness problems in the existing *Heritage Act 2011 (NT)*. Section 41A creates a new one at the point that matters most commercially. Section 25(1) should be removed from its scope.

Section 25 should be amended to require the Heritage Council 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. This step makes the Heritage Council's decisions more legally durable and gives the project team the earliest possible visibility of a material risk event. The MCA NT accepts that sections 21(1), 22(1) and 23(2) are appropriately characterised as preliminary steps and does not seek to disturb that provision.

Assessment period extensions

The Bill introduces a clear trigger mechanism for when the assessment clock starts, which is supported. The extension ground for remoteness is also sensible. Eliminating time constraints for assessors and community representatives on Country has logistic concerns and the framework should reflect that.

The problem is the grounds for the second extension, which allows the Heritage Council to extend the assessment period for any reason it considers appropriate without any time limit. MCA NT members cannot effectively plan 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 end point. The fix is straightforward: replace the open-ended extension grounds with defined additional circumstances and limit the number of allowable extensions within the *Heritage Act 2011 (NT)*.

Where an assessment is nonetheless running beyond the regulatory defined timeframes on a project of economic significance to the Territory, there should be an explicit escalation pathway.

The Territory Coordinator (TC) is the right escalation mechanism to coordinate and drive approvals processes on major projects. The Bill should be amended to allow the TC to direct the Heritage Council to conclude an assessment within a specified period where a project has been declared a major project or where the TC is otherwise satisfied that the assessment is materially affecting a significant Territory investment. That is not making heritage decisions political. It is giving the Territory's own economic coordination mechanism a proportionate role in a process that directly affects the investment decisions the Territory's budget depends on.

Work approvals and identifying object owners

The Bill requires an applicant to demonstrate best endeavours to identify and consult with the owner of a heritage object before a work approval can proceed. The MCA NT supports that obligation.

The problem is what happens when ownership is genuinely disputed. The *Heritage Act 2011 (NT)* provides no mechanism to resolve that dispute, and the department has confirmed that identifying the appropriate custodian is deferred to Land Councils without any statutory standing for that determination. A Territory minerals company that has done everything the *Heritage Act 2011 (NT)* asks of it and can still be unable to obtain a work approval because ownership remains open.

That is a blockage at the point where planning converts to action, and it is the kind of open-ended uncertainty that stalls projects and erodes investment confidence.

This gap sits in direct tension with the direction of Commonwealth heritage reform. The reforms being developed by the Department of Climate Change, Energy, the Environment and Water in partnership

with the First Nations Heritage Protection Alliance propose a Traditional Owner Representative Institution (TORI) model that would identify a single authoritative body to speak for Country on heritage matters in any given area, prioritising existing recognised bodies including Land Councils established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* or Registered Native Title Parties as defined by the *Native Title Act 1993 (Cth)*. The explicit purpose of the TORI model is to give companies and communities certainty about who is the authorised Traditional Owner engagement party.

The Territory's work approval process is asking companies to answer the same question, but without any equivalent mechanism and with no resolution pathway when the answer is contested. If the Commonwealth legislates a TORI model and the Territory maintains an undefined owner concept with no statutory resolution process, a mining company operating in the Territory will face two regimes attempting to answer the same question through incompatible processes.

The Territory should get ahead of that problem.

The Bill should provide that where a work approval relates to a heritage object and the identity of the owner is in dispute, the Land Council's identification of the relevant custodian is sufficient to satisfy the best endeavours requirement and allow the approval to proceed. That is not a radical proposition. It is consistent with the principle underpinning the Commonwealth's TORI model and it gives the work approval process the confidence it currently lacks without displacing the Land Council's existing role in custodian identification.

Delegation of heritage powers

The *Heritage Act 2011 (NT)* currently contains no general power for the Minister to delegate heritage functions. This Bill introduces one for the first time. Under the amended section 146, the Minister may delegate any power under the *Heritage Act 2011 (NT)* to any person, with no requirement that the delegate have any relevant skills, knowledge or experience in heritage, cultural matters or the communities whose heritage is being assessed.

Heritage decisions are consequential in both directions.

For Traditional Owner communities, a decision about the significance of a place or object goes to the heart of cultural identity and connection to country. For a company, it may determine whether a project area is available for development or subject to constraints that reshape the entire program.

Decisions of that weight should be made by people who understand what they are deciding. A delegate operating without cultural knowledge or heritage expertise is more likely to make a decision that is wrong in substance, legally vulnerable or both.

The consequences of getting this wrong extend beyond the Territory's own framework. Where a Traditional Owner community believes a heritage decision has been made without adequate cultural understanding, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* provides a direct pathway to seek Commonwealth intervention.

An increase in *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* referrals from the Territory is not a theoretical risk. It is the predictable outcome of a delegation regime that allows consequential heritage decisions to be made by people without the knowledge to make them properly. Every referral to the Commonwealth is an admission that the Territory's framework has failed, and every referral adds a layer of uncertainty to projects that the Territory's investment environment cannot afford.

The Bill should require that any delegate must satisfy the Minister that they hold the appropriate skills, knowledge and experience relevant to the function being delegated. That is the standard the *Heritage Act 2011 (NT)* currently sets for Heritage Council members. Applying the same standard to delegates is not an imposition. It is the baseline required to keep consequential heritage decisions within the Territory's own framework and out of the hands of the Commonwealth Minister.

Heritage Council composition

The Heritage Council is the body that determines whether places and objects are of heritage significance. Those determinations shape what can be done on Country, what constraints are attached to tenements and what protections Traditional Owners can rely on. Getting those determinations right depends on all members of the Heritage Council having the necessary cultural knowledge to make the determination.

The Bill sets the minimum requirement for Aboriginal representation at two members out of a possible nine, qualified by as far as practicable. That is an inadequate foundation for a body whose core function is the assessment of Aboriginal cultural heritage. Two members can be outvoted on every question. The as far as practicable qualification allows even that floor to be treated as aspirational rather than mandatory. A Heritage Council operating at minimum composition could make significant heritage determinations affecting communities across the Territory without the cultural knowledge those communities have a right to expect to inform the process.

When Traditional Owner communities lose confidence in the cultural integrity of the Territory's heritage assessment process, they have a direct alternative. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* allows applications to the Commonwealth Minister for protection of places and objects where a state or territory framework is not providing adequate protection.

A Heritage Council that lacks genuine Aboriginal cultural expertise is a Heritage Council that is more likely to generate exactly the kinds of outcomes that drive communities to the Commonwealth for relief. That is damaging to the Territory's relationship with its communities, and it is damaging to investment confidence, because an *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* referral can stop or constrain a project at any stage, where there is currently no defined timeline for resolution.

The floor should be at least three Aboriginal members on any Heritage Council of seven or more, and the as far as practicable qualification should be removed. That is the minimum required to maintain the cultural credibility of the Heritage Council's determinations and to keep heritage matters within the Territory's own framework rather than pushing them toward Commonwealth intervention.

Notification of declarations

A provisional or final heritage declaration has immediate legal effect from the moment it is made. Under the Bill, that declaration is published on the agency's website. For a company with a project team operating at a remote site in the Territory, website publication is not reliable notice. Communications infrastructure at remote sites is often intermittent. A team mobilised for a drilling program may not learn of a declaration affecting their work area for days after it has taken effect.

A company that continues the works program in a declared area without knowing a declaration exists is not acting in bad faith, but it is nonetheless in breach of the *Heritage Act 2011 (NT)*.

The unmitigated regulatory exposure creates a real legal and operational risk. More significantly, an inadvertent breach of a heritage declaration in the Territory is precisely the kind of incident that gives Traditional Owners and anti-mining activist groups the grounds to seek Commonwealth intervention and relief through the protection orders outlined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*.

A Commonwealth referral that has been triggered by a notification failure that the Territory could have prevented is not just an embarrassment; it introduces an indefinite layer of Commonwealth oversight over a project that was otherwise progressing within the Territory's own framework. That is a sovereign risk for the Territory and an investment risk for the project.

The mineral tenure register already identifies every company holding a licence or tenement over any given area of the Territory. Requiring the agency to give direct written notification to registered holders within a defined period of a declaration being made is a straightforward administrative step. It protects

companies from inadvertent breach, it protects Traditional Owners from the consequences of inadequate protection, and it keeps heritage matters where they belong, in the Territory's own framework rather than escalating to the Commonwealth.

Investment implications

These are not isolated drafting issues. Together, they introduce uncertainty at every critical decision point in the project lifecycle, from exploration commitment through to work approvals, heritage determinations and notification of constraints.

Each point is where capital decides whether to proceed. With a 16-year average lead time from discovery to extraction, avoidable uncertainty does not merely slow projects. It can stop them, because capital that does not commit at exploration never reaches feasibility, and projects that stall at feasibility deliver no royalties, jobs or contracting outcomes.

The Territory's $6.37 billion pipeline of 21 developing projects underpins the need for infrastructure corridors linking projects to processing and export. These corridors depend on sustained project activity. The heritage assessment concerns raised will directly influence whether that activity occurs.

A junior explorer moving to jurisdictions with clearer regulatory settings is not theoretical. It is how investment decisions are made when cumulative regulatory risk exceeds project viability.

There is also a compounding risk that the MCA NT has identified across several sections: the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*. Where the Territory's heritage framework is perceived to be operating without adequate cultural integrity, whether through unqualified delegates, an under-representative Heritage Council or declarations that do not reach affected parties in time, the Commonwealth backstop becomes available.

An increase in referrals to the Commonwealth Minister under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* is not in the Territory's interest. It is not in the interest of the minerals industry. And it is not in the interest of Traditional Owners, for whom a Commonwealth referral process offers no defined timeline and removes the matter from the Territory's own governance structures. There are conditions in the Bill that make Commonwealth intervention attractive and necessary, the Territory's frameworks must be designed to reduce this risk.

Heritage protections must not be reduced but what has been highlighted is the need for a framework that works: one that resolves the regime overlap, provides defined timelines, gives the Territory Coordinator a role where assessments stall, makes work approvals operable when ownership is disputed, ensures delegates are competent, keeps the Heritage Council culturally credible and makes sure declarations reach the people they affect.

The MCA NT supports the Bill in principle, and recommends further practical, targeted amendments to ensure the settings are workable, timely and effective in practice:

The MCA NT is available to work directly with the Minister and departmental officials on the drafting of those amendments and looks forward to continuing engagement through the legislative process. If you have any questions, please contact myself on [redacted], or Matt Denyer, Principal Advisor Indigenous Partnerships, Minerals Council of Australia on [redacted] or [redacted].

Yours sincerely

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Cathryn Tilmouth
Executive Director, Northern Australia