



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

15th Assembly

LEGISLATIVE SCRUTINY COMMITTEE

Public Briefing Transcript

11.00 am – 12.00 pm, Tuesday 1 April 2025

Litchfield Room, Level 3, Parliament House

Members: Mrs Oly Carlson MLA, Chair, Member for Wanguri
Mr Andrew Mackay MLA, Deputy Chair, Member for Goyder
Justine Davis MLA, Member for Johnston
Mr Clinton Howe MLA, Member for Drysdale
Mr Chanston Paech MLA, Member for Gwoja

Witnesses: ***Aboriginal Areas Protection Authority***
Dr Benedict Scambary: Chief Executive Officer
Cameron McInerney: Director Policy and Governance

Department of the Chief Minister and Cabinet

Jean Doherty: Deputy Chief Executive Officer, Strategic and Corporate Services

Bronwyn Haack: Senior Director, Legal Policy via TEAMS

Chris Stewart: Director, Aboriginal Land and Waters

The committee resumed at 11 am.

ABORIGINAL AREAS PROTECTION AUTHORITY

Madam CHAIR: On behalf of the committee I welcome everyone to this public briefing on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025. I welcome to the table to give evidence to the committee, from the Aboriginal Areas Protection Authority, Dr Benedict Scambary, Chief Executive Officer and Cameron McInerney, Director Policy and Governance.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public you may ask that the committee go into a closed session and take your evidence in private.

Could you please each state your name and the capacity in which you are appearing.

Dr SCAMBARY: Dr Benedict Scambary, Chief Executive Officer of the Aboriginal Areas Protection Authority.

Mr McINERNEY: Cameron McInerney, Director Policy and Governance, Aboriginal Areas Protection Authority.

Madam CHAIR: Thank you. My Name is Oly Carlson. I am the Chair and the Member for Wanguri. I have the Member for Johnston, Justine Davis, the Member for Drysdale, Clinton Howe, and joining us online is the Member for Gwoja, Chansey Paech, and the Member for Goyder, Andrew Mackay.

Dr Scambary, would you like to make an opening statement?

Dr SCAMBARY: Thank you Chair. Chair and members of the Legislative Scrutiny Committee, I am Dr Benedict Scambary, Chief Executive Officer of the Aboriginal Areas Protection Authority and I am joined by Mr Cameron McInerney the Director of Policy and Governance at the Authority. I acknowledge the Larrakia people, the traditional owners of this land that we meet on. I also acknowledge Lorraine Jones, Deputy Chair of the authority, Mr Chris Neade and Ms Barbara Shaw, who are authority members in the audience today.

I note that Members of the authority travelled from remote areas to participate in this process today but will not be appearing at the request of the Chair. While we respect the committee's decision regarding the format of this meeting, we do wish to acknowledge the considerable efforts of our board members who bring invaluable cultural and regional perspectives to these discussions. Their voices are central to understanding the impact of these amendments on Aboriginal custodians and the broader community.

Thank you for the opportunity to appear before you today to discuss the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025. I acknowledge the committee's role in examining the proposed amendments and appreciate the chance to contribute to this important discussion.

The Aboriginal Areas Protection Authority is an independent statutory body established under the *Northern Territory Aboriginal Sacred Sites Act 1989* to regulate the protection of sacred sites. As part of our statutory function, we ensure that development and land use in the Northern Territory occurs in the way that respects and preserves the cultural heritage of Aboriginal people and creates certainty for development.

Consultation with custodians to ascertain their wishes in relation to the protection of sacred sites is a key principle of the legislative framework. That arises from section 73(1)(a) of the *Aboriginal Land Rights Act 1976*, which is the head of power for the Northern Territory Government to legislate for the protection of sacred sites.

We are available here today to discuss the proposed changes to the *Sacred Sites Act*. Our goal is to ensure that any amendments to the Act strengthen rather than weaken the robust protections that have been in place for decades and that are so necessary to the promotion of responsible development in the Northern Territory.

We look forward to assisting the committee in its deliberations and we are happy to respond to any questions. However, we are not the lead agency for the preparation of this Bill and I note that the Department of the Chief Minister and Cabinet is appearing subsequently.

Mr HOWE: Thank you for coming in today. Please pass on to all your membership that there will be an opening for submissions, and that today is purely for us to learn what the changes are. For members of the board and other traditional owners you work with, there will be time for submissions for their voices to be heard. I want to make that very clear, so please pass that message on.

Getting to the point of what this amendment looks at, can you speak to any of the proposed changes?

Dr SCAMBARY: The proposed changes are really four parts of the Act that are being amended. The first one is introducing a provision for the minister to be able to appoint Northern Territory Government board members to the board at his discretion. Currently, the Act is silent on the provisions of appointment of government members, whereas the other 10 members of the board—there are two government members—are appointed by the Administrator on nominations from the four Northern Territory land councils.

That is the first amendment, to give the minister that discretion.

The second one is about transferability of authority certificates. There is a new provision which allows a certificate held by one proponent to be transferred to another proponent. Ideally, that would occur in the context where ownership of that development changes hands. One of the key parts of that amendment is that it appears to negate the requirement for consultation with custodians of sacred sites upon the transfer. It appears to remove the discretion of the authority in considering whether that transfer should or should not occur.

In the majority of cases, I think it would be completely uncontroversial, but there will be some instances where certificates, for a variety of reasons, may not be fit for the purpose of transfer. There appears to be a slight conflict between the current section 42 of the Sacred Sites Act which mandates consultation with Aboriginal custodians and the new drafting that appears to negate that. That is an ambiguity that we are concerned about.

In addition, and very similar, there is a new provision to add a recorded party to an existing authority certificate, and the same concerns exist in relation to that. Whilst there are very many practical reasons for doing that, the discretion of the authority to consult with custodians about adding a recorded party appear to be removed. Again, that ambiguity between section 42 of the Sacred Sites Act, which is the requirement to consult, and this new provision 22B is unclear.

Noting, of course, that—as I mentioned in the opening statement—section 73(1)(a) of the Aboriginal Land Rights Act, which provides a head of power for the Northern Territory Government to legislate for the protection of sacred sites, also mandates consultation and that the wishes of Aboriginal people be taken into account.

The final amendment is the introduction of enforceable undertaking provisions. That is not something that exists in the Act at the moment. When offences are committed, the authority typically litigates those offences. This is a new provision. I believe it is modelled on the *Petroleum Act*. Similar provisions occur in the *Environment Protection Act*. It creates a schema whereby a proponent who has allegedly breached the Sacred Sites Act can enter into an enforceable undertaking. A breach of that undertaking would then be something that is resolved by a court. That adds some flexibility in the way the authority enforces the act. Unlike the *Environment Protection Act*, there are no additional provisions around compliance and enforcement powers that would complement the enforceable undertakings.

Whilst it is a good thing to have this introduced, we believe that there needs to be a broader framework around this in the act. That is the summary of the amendments that are proposed.

Mr HOWE: Thank you; that was good.

J DAVIS: I also acknowledge the senior leaders in the room. Thank you for travelling here today.

Thank you for that overview; it was helpful for all of us. I am interested in how AAPA was involved in the development of this Bill; whether you could share that with us.

Dr SCAMBARY: As I mentioned in the opening statement, the Aboriginal Areas Protection Authority is not the lead agency for the development of the Bill.

J DAVIS: In terms of consultation, I note that one of the purposes of the Bill is to make it more efficient. How was AAPA involved in discussion around that? Was AAPA involved in discussion around that?

Dr SCAMBARY: Some of these provisions will assist in creating efficiency in certain areas of the act, but there is a broad range of other initiatives that we would have thought would be introduced to increase efficiency of the authority.

J DAVIS: Could you talk to them briefly?

Dr SCAMBARY: They may need to be answered by the Chief Minister's department.

J DAVIS: Okay. You talked about potential clashes between this Act and the Land Rights Act in requirements of consultation. Could you expand on that a little?

Dr SCAMBARY: Yes. Section 73(1)(a) of the Land Rights Act gives the Northern Territory the power to legislate for the protection of sacred sites, whereas I understand the Territory derives its power for other laws from the Self-Government Act.

When self-government was introduced in the Northern Territory the precursors of this Act was one of the first pieces of legislation passed. Section 73(1) limits the power to the protection of sacred sites and mandates that the Act cannot permit desecration of sacred sites. It also mandates that the wishes of Aboriginal people be taken into account in the schema.

J DAVIS: Part of our terms of reference as a committee are to determine whether or not proposed Bills pay sufficient regard to Aboriginal and Torres Strait Islander tradition. Do you have any comments to make on that in relation to this Bill?

Dr SCAMBARY: As I have outlined, there are concerns about particularly the transferability and recorded parties' part where there are, in the course of the work of the authority we deal with a great variety of different scenarios.

There does not appear to be the capacity within these provisions to exercise a discretion about transferring a certificate or adding a recorded party where there might be an impact of the type that you are referring to.

J DAVIS: I think you said earlier that, in general, would be uncontroversial, but there may be times where a certificate may not be fit for purpose for transfer. Is there something you could give an example of?

Dr SCAMBARY: The authority has been in operation for 45 years, or thereabouts. The practice of issuing certificates under this Act has been occurring since 1989, so certificates are typically issued for the proposed works and in relation to a particular area for a specific project. The certificates do not have an end date, so they are effectively issued in perpetuity, but if the project is completed, there is an argument to say that certificate is spent.

There are other certificates where maybe it is an ongoing project; maybe it is roadworks construction and maintenance, and a certificate issued in, say 1993, will not necessarily be drafted in a way that would be acceptable in a contemporary setting. The maps from those days are often hand-drawn, not digitally created or referenced. There are other factors, such as the people who may have been consulted in 1993 for those roadworks are no longer alive. There is intergenerational change, so re-issuing a certificate from 1993 without having the ability to say, 'Let's update this in terms of contemporary mapping and reconsult with contemporary custodians'—that discretion does not appear to be in these amendments.

J DAVIS: You may not be able to answer this, but I am wondering if you are able to be a tangible example of where that may be problematic.

Dr SCAMBARY: We have a considerable body of legacy certificates there, so there are a lot of unanticipated issues that might arise. The roadworks certificates would be an example. Perhaps a certificate issued for a subdivision—where the subdivision has been built, we may consider it to now be spent, but a new proponent may wish to build a new facility within that subdivision that might be an industrial lot or a factory, or something like that.

Those things are subject to broader planning laws, but there may be a situation where contemporary custodians would assert that they were never consulted about that work in the context of that certificate. If it happened a long time ago, the validity of those consultations to the contemporary context could be questionable.

J DAVIS: The impact of this Bill is that AAPA would have to transfer, would not be able to make an assessment and do consultation?

Dr SCAMBARY: I believe the wording is, 'the authority must'.

Mr PAECH: I acknowledge those who have travelled far and wide. I have a question about the transfer and extension of authority certificates. Following on from the Member for Johnston, what is to stop a certificate from being passed from company to company indefinitely with no engagement with custodians?

Dr SCAMBARY: The provisions would allow that. There are possibly circumstances where that may not be problematic, but there would be circumstances where it is. An example where it may not be so problematic is where an existing mine has the benefit of an authority certificate and the mine changes hands. The proposed works are still the same and consistent with the certificate. Typically, there would be some kind of land use agreement associated with that mining activity, and other approvals that would transfer with the sale, but the certificate does not.

It is possible, in other scenarios, that there may be issues with the nature of the new proponent. It might be a corporate entity that has been prosecuted before or has a poor relationship with custodians in other contexts. Those issues are not able to be accounted for in these provisions.

Mr PAECH: Are you aware if these provisions will be retrospective to existing certificates?

Dr SCRAMBARY: Yes, they will be retrospective.

Mr PAECH: These changes would impact things such as clearances at the Waterfront?

Dr SCRAMBARY: They would impact any early certificate that the authority has issued.

Mr PAECH: To clarify, any existing certificate that has been issued such as the Darwin Waterfront Convention Centre development and any other certificate would be subject to having the appropriate provisions introduced that could be passed on to different owners?

Dr SCRAMBARY: Yes, that is my understanding.

Mr PAECH: When we are talking about enforceable undertakings, is AAPA aware, or are there any safeguards that will be introduced to prevent enforceable undertakings from being misused by corporations to avoid penalties?

Dr SCRAMBARY: The way the provisions are drafted the authority would have to agree to the enforceable undertakings, so I do not think there would be a situation where the authority would be forced to accept an enforceable undertaking.

Mr PAECH: There is obviously new ministerial powers for the board composition. Is there any mechanism to provide that accountability to the community and the AAPA Board when the government makes a decision about removing one of its board members?

Dr SCRAMBARY: The way the provision is drafted at the moment, the minister may write to the Administrator to recommend the appointment or removal of a government board member. That is the accountability there, but it is not that the minister can simply remove a government nominated board member, but can make a recommendation to the Administrator who appoints all of the members of the board.

Mr PAECH: Following on, I have noted that the AAPA Board has obviously spoken publicly about these changes. Are there additional changes that the AAPA Board believe are required to modernise the legislation?

Dr SCRAMBARY: The Act has not been amended substantively since 1989. It is silent on a range of things. It is short; only 22 pages. The board is conscious that the context we operate in is becoming more complex.

The view is that the Act should be modernised to account for the complexity of the contemporary context within which we operate.

Mr PAECH: Would it be fair to say that the AAPA Board would welcome a comprehensive approach to contemporise the legislation, given that 1989 a lot of penalty points and units were substantial lower and they should be increased to reflect modern-day costs?

Dr SCRAMBARY: Broadly, the board is supportive of making the Act more contemporary and strengthening some of the issues about compliance and enforcement and creating efficiencies to overcome some of the obstacles that exist in the current Act.

Mr PAECH: Okay. If this legislation passes, what implications will that have on AAPA's ability to conduct its clearances? The reason I am asking is when you apply for a certificate, a clearance, you are providing information regarding a particular development. These changes will now allow for a certificate or a clearance to be passed on indefinitely. Will that increase for AAPA the ability to participate or undertake the consultation works, given that someone might be applying for a clearance of a footprint area of 3,000 metres but at the time there is an issue regarding the height restrictions? Will that increase AAPA's consultation processes because they will have to be much broader to try and capture any future development?

Mr SCAMBARY: Broadly, the consultation process and the process for authority certificates will remain the same. Those provisions are not being amended.

But, yes, in relation to the notion that certificates may be transferred or recorded, we will need to incorporate consideration of that into the consultation that we undertake upfront. One of the limitations here with transfer is that the subject land or the proposed works will not change. It does not give the opportunity for a new proponent who has had a certificate transferred to them to change the proposed works or the subject land that is permitted by that certificate.

Increasingly the authority, as are other organisations involved in the cultural heritage space, is having to become way more sophisticated regarding the processes we engage in, given the complexity and context within which we operate.

Mr PAECH: Sure. I am trying to understand or ascertain the appeals process for traditional owners against a clearance or a development given that, at the time, someone may be consenting to a development that is very plain and then at some point there is a development that is multiple stories high that impacts on the local amenity and on surrounding sacred sites. What is the mechanism? Is it judicial review? What is the process?

Mr SCAMBARY: There is currently no review process in the Act for custodians who are aggrieved by a decision of the authority. There is a review process for proponents.

Mr PAECH: Is it the view of the AAPA board that consideration should be given for an appeals process of traditional owners?

Mr SCAMBARY: Yes.

Mr HOWE: I just want to get this right. I understand a certificate is issued. I will use the example of a mine. It is nice and easy. There is no change to the mining operation. The change is owners. Then that gets transferred across with it as long as the operation stays the same. Correct? Okay.

The new owner then wants to expand the mine into new areas. Do they then have to come back to the board if they plan to do that?

Mr SCAMBARY: Yes. If they have bought the mine and have engaged in the process of transferring the certificate, and then want to extend the mine then they need to seek either a variation to that certificate or a new certificate. That process will entail consultation with custodians regarding sacred sites and any impacts that might occur to sacred sites if there are any.

Mr HOWE: I wanted to get that bit right. Any change to the operation has to come back for a consultation process?

Dr SCAMBARY: Unless those changes are contemplated by the certificate. Scenarios might be that the certificate may include provisions for ongoing use and maintenance and the maintenance works change, but they are still contemplated by the certificate. It is not at the micro level; it is more about the impacts of the

activities on sacred sites. An extension of the subject land would require a variation and a new consultative process.

Mr HOWE: I guess that was the piece I wanted to get to. If it is outside of the certificate, I want to make sure it comes back, which it sounds like it does.

I noticed you mentioned government board members. Can you give a breakdown of the board and how many positions are government board members?

Dr SCAMBARY: The board of the Aboriginal Areas Protection Authority, which is in fact the authority that holds all the powers of the Act which are then delegated to me, as Chief Executive Officer, is a 12-member board of equal gender. The 10 members are drawn from nominations from the four NT land councils. The typical split is that the Northern Land Council and Central Land Council have four members each on the board. The Anindilyakwa Land Council and Tiwi Land Council have one member each.

Currently, the Act is silent on the other two members, but it has long been the practice that those two members are appointed by the relevant minister—not appointed by the relevant minister, but appointed by the Administrator on the nomination of the relevant minister. The Act is currently silent on anything to do with government members; it does not even say they are government members. Over time, ministers have nominated people who have no association with government to fulfil those roles. Other times, they have been senior public servants.

Mr HOWE: Is it fair to say this legislation is putting into writing the status quo that has been occurring?

Dr SCAMBARY: Yes. Sorry—except to the extent that it now gives the capacity to remove one of those members.

Madam CHAIR: In the interests of time, on behalf of the committee, I thank you for appearing before the committee. Thank you for your contribution.

The committee suspended.

DEPARTMENT OF THE CHIEF MINISTER AND CABINET

Madam CHAIR: On behalf of the committee, I welcome everyone to this public briefing on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025.

I welcome to the table to give evidence to the committee, from the Department of the Chief Minister and Cabinet Ms Jean Doherty, Deputy Chief Executive Officer, Strategic and Corporate Services; Mr Chris Stewart, Director, Aboriginal Land and Waters; and via Microsoft Teams, Ms Bronwyn Haack, Senior Director, Legal Policy.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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Could you each please state your name and the capacity in which you are appearing.

Ms DOHERTY: My name is Jean Doherty, Deputy Chief Executive Officer of the Department of the Chief Minister and Cabinet.

Mr STEWART: My name is Chris Stewart. I am the Director, Aboriginal Land and Waters Unit in the Department of the Chief Minister and Cabinet.

Ms HAACK: My name is Bronwyn Haack. I am a legal practitioner. I am joining you from Victoria. I am sorry. I travelled prior to this being scheduled. I am a Senior Director of Legal Policy in the Department of the Chief Minister and Cabinet.

Madam CHAIR: Thank you. My Name is Oly Carlson. I am the Chair and the Member for Wanguri. I have the Member for Johnston, Justine Davis, the Member for Drysdale, Clinton Howe, and joining us online is the Member for Gwoja, Chansey Paech, and the Member for Goyder, Andrew Mackay.

Ms Doherty, would you like to make an opening statement?

Ms DOHERTY: As expressed by the CEO of AAPA in the previous session, I will reframe the purpose of the amendments for the Bill that is before the Assembly.

The amendments to the sacred sites legislation aim to provide a concise suite of administrative reforms to improve the operation of the *Sacred Sites Act*. These reforms aim to strengthen sacred sites protection and improve efficiency of regulatory processes to support safe and respectful development in the Northern Territory.

The changes are designed to encourage more people to seek authority certificates from the Aboriginal Areas Protection Authority as a proactive measure to safeguard sacred sites. It does not seek to avoid the process of applying for certificates.

The key feature of the proposed reforms will be to:

- add enforceable undertakings, which is a key feature of many other environmental and development legislation regimes
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- clarify the existing practices—which the CEO of AAPA referenced in his previous session—regarding composition of the board of AAPA, which has traditionally been comprised of 10 members nominated by land councils and two members nominated by the minister. However, these arrangements were not prescribed in the legislation. The legislation has previously been silent on the composition of the board. These amendments seek to clarify that and prescribe those arrangements which are occurring now.

The other proposed reforms to the Bill will be to introduce a mechanism to transfer an authority certificate to another proponent, noting the extent of the authority certificate in question must be for the same area of land and the same works as with the original certificate, where prior consultations have already been undertaken. Importantly, this preserves the original protections, limitations or controls on an area of land but addresses process inefficiencies and current duplication.

The Bill introduces a mechanism to have additional persons or groups added as recorded parties to the existing authority certificates on application of the certificate holder. Again, this is very important to preserve the original protections, limitations or controls on an area of land, addressing current inefficiencies and duplication where parties must currently apply for a new certificate if the same works are to be applied.

This aims to reduce regulatory burden and red tape in long-term projects involving multiple parties while ensuring the original protective conditions required for the protection of sacred sites, as originally afforded by the authority certificate in question, are applied to the additional parties.

In addition, and separate to the work progressing with the Bill, we are progressing at the same time, regulations to enable AAPA to issue infringements as an additional regulatory tool and a complementary tool for the enforceable undertakings, also providing additional protections for sacred sites while reducing unnecessary delays in the regulatory framework that exists now.

The amendments seek to strike a balance between cultural heritage protection and economic development, ensuring that sacred sites remain protected by reducing unnecessary delays in approvals.

I will also cover in my opening statement the role that DCMC has provided in relation to the development of the draft Bill. As a central agency, DCMC has provided support to AAPA on the development of this Bill which was the subject of a prior consultation process through a 2016 review.

It is not unusual for DCMC to provide support across government reforms and to facilitate with independent statutory agencies on the development of a Bill as requested by government, given the multiple and diverse interests that may arise.

J DAVIS: I wanted to pick up on your last point, when you said your role was to provide support to AAPA in development of the Bill; did I understand that correctly?

Ms DOHERTY: That is correct. DCMC has worked with AAPA, noting the varying interests that have been expressed by the CEO in relation to providing instructions to the government on the development of the Bill. The Bill has had reference to a 2016 review process, which DCMC was the lead agency for at the time. An independent report was provided to the government of the day by PricewaterhouseCoopers, which contained a number of recommendations and was based on extensive consultations across the Territory, including with traditional owners.

DCMC has worked to bring together various elements in this current targeted suite of reforms, including the transferability of certificates and adding additional parties to certificates—which were referenced in the 2016 review—together with the enforceable undertakings, the composition of the board and the other elements of the amendments, which we worked on with the regulator to develop, noting the role they have on implementing the reforms, particularly in regard to the regulation and compliance aspects.

J DAVIS: In relation to the current version of the Bill we have before us, are you able to tell us how AAPA was involved in this specific version, and who else might have been consulted? Noting that AAPA outlined many other areas where they believed this Bill could be more efficient, which I do not see reflected in any part of this Bill.

Ms DOHERTY: A list of those consulted in relation to the development of this Bill, including a number of departments with either responsibility for Aboriginal policy and land, planning and development, and legal or regulatory functions, including the departments of Treasury and Finance; Attorney-General and Justice; Logistics and Infrastructure; Agriculture and Fisheries; the Darwin Waterfront Corporation; Mines and Energy; Lands, Planning and Environment; and Chief Minister and Cabinet.

Additionally, as was the subject of the minister's introductory statement in parliament, made publicly by the Minister for Lands, Planning and Environment, the Honourable Joshua Burgoyne MLA, together with AAPA and DCMC officials, who conducted targeted consultation with the AAPA board in late February, which included representatives of land councils. The Bill has been developed with reference to the 2016 review process, and I have a list of the consultations which occurred at that time. I understand there has been a series of working group consultations since the 2016 review, which has been the subject of various discussions about the implementation and development of reform process, in light of the 2016 review recommendations.

J DAVIS: Thank you for outlining the history of consultation; it sounds like it has been relatively extensive. I am particularly interested in this specific version of the Bill and who was consulted in relation to what we are looking at today.

Ms DOHERTY: I had outlined that, and I will specifically refer to that again. In relation to the current Bill, targeted consultation has occurred this year with the following agencies, with Aboriginal policy and land, planning and development, and legal or regulatory functions, including AAPA; the departments of Treasury and Finance; Attorney-General and Justice; Logistics and Infrastructure; Agriculture and Fisheries; the Darwin Waterfront Corporation; Mines and Energy; Lands, Planning and Environment; and Chief Minister and Cabinet, including through our Aboriginal lands policy area, as well as AAPA as the regulator. It is essential we have consulted with AAPA as the regulator.

Additionally, the Minister for Lands, Planning and Environment, together with AAPA and DCMC have conducted consultation with the AAPA board in late February, which included representatives of land councils, including the Northern Land Council, Central Land Council, Tiwi Land Council, Anindilyakwa Land Council and other members.

Mr PAECH: Just to be clear, why was the Darwin Waterfront involved in the consultation when other statutory bodies were not? I am just trying to get some clarification. The Northern Territory land councils said they met with the minister but were not consulted. I am just thinking to understand what is the government's definition of consultation for this process?

Ms DOHERTY: I was not in attendance at the meeting with the minister; however, AAPA may be able to provide further information in relation to what was covered. I understand there was a high-level discussion about the purpose and objectives to be sought through the introduction of the Bill, and that the current

consultation process through this scrutiny committee process, provides further opportunity for the specifics of the Bill to be consulted on.

Regarding why the Darwin Waterfront Corporation was consulted, it was consulted in relation to its experience with planning and development in relation to sacred sites, as were a number of other planning and development agencies.

Mr PAECH: Is that not a conflict of interest given that the Darwin Waterfront has been involved in certificates and active certificates now?

Ms DOHERTY: The current certificates in play in relation to either with the Darwin Waterfront Corporation or any other proponents were not part of the department's consideration around the drafting of the Bill. The Bill, as designed, was largely based on the findings of the review of the 2016 PWC report, including the specific instructions for the transferability of the certificates.

Mr PAECH: Following on from that, you are working off a review from 2016—that is nine years ago. Obviously, the landscape has changed and there has been significant destruction of cultural heritage sites across the country. I am wanting to understand if the government had met with AAPA—AAPA has expressed a desire to want to have additional provisions included to contemporise the Act. Why have there not been an incorporation of any of the other AAPA's proposed reforms?

Ms DOHERTY: In relation to the remaining recommendations, there were 39 recommendations made by the PricewaterhouseCooper's report, which was reviewed in 2016. The current Bill ...

Mr PAECH: I think there is some confusion. I acknowledge there are 37 recommendations—21 required legislation amendments, 17 day-to-day operations and 11 were set to enhance. I know over the last nine years, AAPA has taken on a volume of work to contemporise and strengthen the Act, looking at increasing penalties for people who do the wrong thing. Is there a reason why the work AAPA has been doing over the last nine years has not been incorporated into these amendments or this proposal?

Ms DOHERTY: The current suite of amendments is targeted, concise and largely administrative in nature. As such, the larger and broader set of reforms, which were contemplated by the 2016 review and the subsequent consultation and various working group parties that have come together since that time, were not contemplated in the current Bill. Any further amendments to the legislation would be a matter for government to consider as part of their overall legislation review schedule.

The current set of amendments were identified to progress now because they are relatively straightforward and administrative in nature and provide some immediate reforms to address the requirements that AAPA has requested in some of the enforcement compliance aspects of the legislation, as well as balancing the requirements for economic development and clarity and transparency for proponents in relation to how the certificates are able to be transferred, or new parties added.

Mr PAECH: It is safe to say that their current amendments are at the minister's request. The other areas of reform, given that AAPA has done a complete rewrite of the Act that has not been introduced yet, are not currently deemed a priority?

Ms DOHERTY: I will clarify that. The government has requested the current set of amendments to progress and we do not have any instructions in relation to the overall reform.

Mr PAECH: I have two questions, Madam Chair, relating to enforceable undertakings and the transfer of authority certificates, if I may?

Madam CHAIR: Yes, Member for Gwoja.

Mr PAECH: I am interested to understand enforceable undertakings. This model is obviously used in the petroleum industry and other areas. It is not, to my knowledge, used in any other jurisdiction for the protection of cultural heritage sites. What has driven this change?

Ms DOHERTY: Member for Gwoja, I defer to my colleague on the Teams links, Ms Bronwyn Haack, to answer this question if possible.

Ms HAACK: I acknowledge the scrutiny committee, the members of the authority in the room. Before I respond to that I also acknowledge my previous dealings with a number of members of the panel. The

Member for Gwoja I worked closely with in his previous role as Attorney-General when I was in Attorney-General's. The Member for Johnston trained me in relation to mediation about a decade ago and may have been my assessor. There is a member of the authority I have worked closely with in a positive, professional capacity. I cannot see who is in the room; I am not sure whether he is there.

In relation to enforceable undertakings, they are a matter on which we have worked closely with AAPA and they speak positively about. I have a legal policy and regulatory background and they are features, as Ms Doherty has pointed out, of many sorts of building development, petroleum-type legislation.

We have tailored it quite carefully for this purpose. I am happy to take you to the Bill, Member for Gwoja, page 6, where it might differ from other regimes. You will see section 39B, Enforceable undertakings. It is enforceable undertaking is a promise given by a person in relation to an alleged contravention of this Act or a term or condition of an authority certificate.

It has been drafted as quite a broad power. Say, for example, I will use myself and my boss, Ms Doherty as an example. If Ms Doherty was a developer and I was a contractor who came onto a site and there is some damage or water leak, for example, which may impact an adjacent sacred site, it is not necessarily known that I did it; it has just occurred. It is not necessarily Ms Doherty who has done it but she would be given an enforceable undertaking to fix that—if it was something her contractor she knew had directly done or effectively something has just happened.

This is really strong in protecting sites. I have a historic background in relation to remediation of building sites for various things. Sometimes the cost of what is required to remediate sites can be extensive. This allows for those conditions—the fixing, the protection. I think there was a question from the Member for Gwoja that Dr Ben Scambray responded to. It will always be in the discretion of the authority about whether they accept—that is on page 7 of the Bill, at section 39C, 'Authority may accept enforceable undertaking'. They will be able to make a number of decisions like other regulators would be able to make about whether this is appropriate, what is suitable for the traditional owners of the land and how those things can be ameliorated or protected.

Mr PAECH: The further question, I am not sure if it is for Ms Doherty or Ms Haack, is when we talk about the transfer and extension of authority certificates—the Bill allows for the authority certificates to be transferred to new parties without any renewed consultation with traditional owners. That is my understanding. What is to stop a certificate from being passed on from company to company indefinitely with no engagement with traditional and emerging custodians.

Ms HAACK: I am happy to answer that. The certificates for sacred sites, it is important to remember, are only part of a development and regulations. There are regulations and planning and building approvals required. This scheme for obtaining certificates is, effectively, to encourage people—many people in the room have significantly more knowledge than I do about this—to engage with the Aboriginal Areas Protection Authority and have identified to them where those sacred sites are.

Then, I understand there is effectively the sacred site protection and all these conditions will be put onto a certificate, and then if the certificate is wrong, there is some sort of protection and certainty for the developer if they do not go there. I believe the Sacred Sites Act is a very strong piece of legislation compared with some of the other systems across Australia for the protection of these kinds of sites. It is in addition to planning and building and those sorts of things.

Mr PAECH: This might be a question for Ms Doherty. Where has the decision arisen that it is to be retrospective in regard to all previous certificates?

Ms DOHERTY: The arrangement for the transferability of authority certificates applies to existing certificates. That was part of the request made by government and was socialised and engaged with ...

Mr PAECH: Just to confirm, that decision has been made by the Cabinet that these are to be retrospective, so this would impact on things like the Darwin Waterfront?

Ms DOHERTY: Thank you, I am not able to discuss Cabinet deliberations in the committee.

Mr PAECH: Yes or no; you have been directed by the minister to include this provision?

Ms DOHERTY: I can confirm that was expressed in the draft Bill has been approved by government, as is the case with all Bills that go to the Legislative Assembly. They have been through a Cabinet process in general terms. In relation to the transferability of certificates applying for original certificates, that is what was

expressed in the 2016 review recommendations, as I understand. I am not altogether sure that it is a new concept. I believe it was the intent in relation to how the transferability of certificates were to be designed through the consultations that have occurred from that time.

Madam CHAIR: On behalf of the committee, thank you for your time today, and thank you for attending via Teams, Bronwyn.

Ms DOHERTY: Thank you, committee, and traditional owners and members of AAPA in the room.

The committee concluded.
