

27 March 2026

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Heritage Amendment Bill 2026 - Submission

To the Committee Secretariat,

This submission is made by GHD Pty Ltd (GHD) in response to the proposed amendments to the *Heritage Act 2011*, introduced through the *Lands, Planning and Environment Legislation Amendment Bill 2025*.

1.1 Proposed Amendments

Table 1 below summarises the proposed amendments to the *Heritage Act 2011*, together with GHD's comments where relevant.

Table 1 Proposed amendments

Clause	Section	Amendment notes	Comments
1.	Short title	This is a standard clause which provides for the citation of the Bill. The Bill when passed will be cited as the Heritage Amendment Act 2026 (amending Act).	No comment
2	Commencement	This clause sets out how the amending Act, wholly or in parts, will be commenced. Generally, this will be done by notice given by the Administrator in the Northern Territory Government Gazette unless otherwise indicated in this clause.	No comment
3	Act amended	This is a standard clause which provides that the amending Act amends the Heritage Act 2011 (the Act).	No comment
4	s.4	(1) The removal of 'appointed members' in the definitions. (2) <i>insert</i> early contact period means the period during which Aboriginal peoples of the Territory first interacted with people from outside of Australia. 5 pre-contact period means the period before the early contact period.	No comment Definition of <i>early contact period</i> is problematic, given the extensive and prolonged contact that occurred in the Northern Territory prior to, and independent of, British colonisation. It is assumed that the heritage framework is intended to protect archaeological evidence associated with all contact-period interactions, including those extending beyond initial contact. Constraining protection to an undefined "early" phase introduces interpretive uncertainty and may unintentionally exclude later

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			<p>contact-period archaeology from protection under the Act, with potential implications for assessment, registration and management outcomes.</p> <p>It is also suggested that 'relic' is considered an archaic term within Australian archaeology, and consideration should be given to alternatives.</p>
		<p>(3) <i>insert</i></p> <p>Note for section 4</p> <p>The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.</p>	No comment
5	s.6	<p>This clause replaces section 6 to clarify the statutory tests for identifying archaeological places and Aboriginal or Macassan archaeological places.</p> <p>Section 6(1) provides that an archaeological place is a place that relates to the past human occupation of the Territory, and contains evidence of modification of the place by the activity of the occupiers.</p>	No Comment
		<p>Section 6(2) provides that an Aboriginal or Macassan archaeological place is a place that relates to the past human occupation of the Territory by Aboriginal or Macassan people during the pre-contact period or early contact period and contains either:</p> <ul style="list-style-type: none"> – a group of relics related to that occupation; – ancestral remains; or – evidence of modification of the place by the activity of Aboriginal or Macassan people. 	<p>While recognising the intent of these changes, the absence of defined thresholds continues to present a key challenge, as has been experienced in other jurisdictions. For assessment and approval purposes, an established baseline—for example, guidance on how many relics constitute a place—would improve certainty and consistency. Ambiguity around thresholds increases interpretive disputes, adds to the administrative workload of the Heritage Branch, and can lead to delays in registration and approval processes. It also makes prosecutions problematic. Clearer thresholds, supported by guidance rather than rigid statutory limits, would assist while still preserving appropriate professional discretion.</p>
6	s.8	<p>This clause amends section 8 to align with the revised section 6 definition.</p> <p>Under section 8, a relic is an Aboriginal or Macassan archaeological object only if it is in an Aboriginal or Macassan archaeological place, or stored in a place in accordance with Aboriginal tradition. As amended, this maintains the policy that isolated relics located outside an Aboriginal or Macassan archaeological place are not automatically protected as heritage objects. Where ancestral remains are present in a place, that place will satisfy section 6(2), and relics within that place will fall within section 8 accordingly.</p> <p>This framework ensures that automatic object-based protection is tied to defined place-based archaeological context or formal custodial arrangements, while preserving the ability to protect significant isolated relics through nomination and declaration pathways where appropriate.</p>	<p>While recognising that examples are not meant to be all encompassing, consideration should be given to the inclusion of grinding patches.</p> <p>Consideration should also be given to the inclusion of Keeping Places within Section 8.</p>

Clause	Section	Amendment notes	Comments
7	s.9	Section 9(1) provides that a relic is an artefact or thing given shape by a person, ancestral remains or something else prescribed by regulation.	'Giving shape' might exclude items such as grinding stones, and alternative phrasing pointing to modification of the relic might be more encompassing. Alternatively examples of actions that give shape to relics may assist in interpretation.
		Section 9(2) clarifies that an artefact or thing may be of any material and updates examples accordingly.	Where <i>wood</i> is added as an example, consideration should be given to using the broader term <i>plant material</i> to ensure the definition is sufficiently inclusive. Consideration should also be given to the inclusion of <i>glass</i> and <i>ceramic</i> materials, particularly in relation to contact-period archaeological relics.
		Section 9(3) clarifies that certain items are not relics, including artefacts made for sale or made as replications for educational or artistic purposes, and any other thing prescribed by regulation.	No comment
8	s.21	This clause updates section 21 of the Act.	No comment
9	s.22	This clause replaces section 22, making it clear that the Council may start an assessment on its own initiative and must give written notice of that decision to the owner.	No comment
10	s.23	This clause inserts an updated section 23 explaining how the six-month assessment period is calculated. It defines the "trigger day" for both nomination-based assessments and Council-initiated assessments and states that the assessment period starts on the earliest of: a) when work on the assessment begins; b) the next in-person meeting after the trigger day; or c) three months after the trigger day. It also allows the assessment period to be extended when needed and requires written notice of any extension and the reasons for it. The amendment is intended to clarify when the assessment clock starts running and formalises the extension process to improve certainty in managing assessment timelines.	Section 23(1)(a) should be tied to the trigger day (being the date of acceptance or initiation) rather than "the day the Council commences work on the assessment". As currently drafted, section 23 effectively allows for an assessment period of up to nine months before a decision is required, notwithstanding that mechanisms already exist under section 23(2) to extend the assessment period where necessary. A six-month assessment period is already substantial and, when coupled with uncertainty around commencement, may impose onerous delays for proponents seeking certainty—particularly where assessments are linked to future work approvals.
11	s.25	Section 25 presently, requires the Council to decide whether a place or object is of heritage significance before the end of the assessment period.	No comment
12	s.26	The current section 26 focuses on public consultation about heritage significance. This clause updates section 26(1) to include consideration of whether the place or object should be conserved. Section 26(2)(b) is also amended to allow for a longer consultation period beyond 28 days if specified in the notice published in the Agency's website.	No comment

Clause	Section	Amendment notes	Comments
13	s.29	This clause amends section 29 to tighten language around who is entitled to receive a review notice on a decision of the Council not to recommend that the Minister declare a place or object to be a heritage place or object.	No comment
14	s.35	Section 35 currently deals with the Minister's decision not to declare a place or object, particularly the requirement to revoke the provisional declaration made with the operation of the current section 37. This clause repeals section 35(4) to align the rest of section 35, while letting the revised declaration and revocation structure introduced by the Bill in new section 39A do its work.	No comment
15	s.36	This clause amends section 36 by updating the section heading to indicate provisional declarations are now centralised under this section. This section continues to operate on satisfaction by the Minister that a place or object is likely to be of heritage significance, and that a provisional declaration is needed to ensure conservation.	No comment
16	s.37	This clause repeals section 37.	No comment
17	s.39A	This clause inserts new section 39A, which sets out when a provisional declaration can be revoked.	No comment
18	s.40	This clause amends section 40 by updating subsections (3) and (4) requiring publication of notice of declarations on the Agency's website while retaining the requirement on the Registrar-General to record the declaration in the record of administrative interests under the <i>Land Title Act 2000</i> .	No comment
19	s.41	This clause amends section 41 by updating subsection (2), preserving the 5-year prohibition on reassessment after the Minister decides not to permanently declare a place or object, but allowing reassessment within 5 years where the nomination is made by the owner or with the owner's consent, or where the Council initiates assessment with the owner's consent. New section 41(3) also provides that where a reassessment under subsection (2) is made within 5 years after the decision, public consultation is not required, the Council may consider previous submissions received, and the Council must make the decision on whether or not to recommend to the Minister that a place or object be permanently declared within 60 days after preparing the statement of heritage value under section 25.	No comment
20	s.41A	This clause inserts new section 41A, providing that decisions under sections	No comment

Clause	Section	Amendment notes	Comments
		21(1), 22(1), 23(2) and 25(1) are preliminary decisions and do not require the decision-maker to afford an affected person an opportunity to be heard.	
21	s.45	This clause aligns the updated public consultation provisions in section 26 with the public consultation provisions for protected classes of places or objects under section 45 of the Act.	No comment
22	s.50	This clause aligns the considerations the Minister is required to be satisfied with when making a permanent declaration under section 34 with similar provisions for permanently declaring protected classes of places or objects under section 50 of the Act.	No comment
23	s.65	Amends decision-making provisions for work approvals, clarifying override and notification requirements.	No comment
24	s.72	<p>This clause amends section 72 to clarify consent requirements for work applications and to strengthen consultation obligations, particularly for heritage objects located or found on freehold land other than Aboriginal land.</p> <p>The new section 72(2)(b) distinguishes between applications relating to heritage places and applications relating to heritage objects. For heritage places, consent must be obtained by the applicant from the owner of the place. For heritage objects, consent must be obtained by the applicant from the owner of the land where the object is located, and the applicant should also provide evidence that they have consulted the owner of the heritage object.</p> <p>The amendments reinforce the legal rights of private landowners as to the enjoyment of their land by clarifying their ability to consent on works happening on their land. At the same time, the amendments also recognise the interests of other stakeholders, including Aboriginal stakeholders, who should be consulted about the protection and conservation of Aboriginal objects located on private land.</p> <p>The new statutory consultation requirements are intended to better inform decision-making under section 72 and support the Minister in setting reasonable conditions on work approvals.</p>	<p>Further clarity would be beneficial regarding the meaning of “owner” of a heritage object, particularly in relation to Aboriginal stakeholders and the interaction with the <i>Northern Territory Aboriginal Sacred Sites Act 1989</i>. While the proposed amendments clarify consent requirements by distinguishing between the owner of the land and the owner of the object, the Act does not define how ownership of an Aboriginal heritage object is to be determined. This issue is especially relevant in areas where Native Title is contested or where multiple groups or individuals assert cultural authority. Clear statutory or policy guidance would reduce uncertainty for applicants and support more consistent consultation practices.</p>
25	s.74	This clause amends section 74(3)(b) to provide that where the applicant for a work approval is not the owner of a heritage place or object and the decision-maker extends the time for deciding an application under section 72, the owner of the place or the owner of the land on which the object is located must be given a written notice of the extension.	No comment.

Clause	Section	Amendment notes	Comments
26	s.77	This clause provides that for work application decisions relating to a heritage object under section 72, notification is required to be given to the owner of the land on which the object is located.	No comment
27	s.128	This clause overhauls section 128 to give effect to changes in the Council's governance structure.	No comment
28	s.134	This clause amends section 134(3) by replacing the fixed number of "at least 5 members" able to call a meeting of the Council, to "a majority of members".	No comment
29	s.136	This clause amends section 136(1) by replacing the fixed number of "6 members" currently required to constitute a quorum to "a majority of members, including the chairperson".	No comment
30	s.146	This clause amends section 146 by permitting the Minister to delegate powers and functions under the Act to a person other than the Heritage Council or a Heritage Council member.	No comment
31	Part 8.2, Division 3 inserted	This clause inserts transitional provisions under new Part 8.2, Division 3. The meaning of 'amended Act' in this clause refer to the Heritage Act 2011 as amended by the Heritage Amendment Act 2026.	No comment
32	Schedules 1 and 2 replaced	Repeals the amending Act the day after commencement.	No comment
33	Act further amended	This clause provides that further amendments to the Act are contained in the Schedule at the end of the amending Act.	No comment
34	Repeal of Act	This is a standard clause that provides that the amending Act will be repealed on the day after it commences.	No comment

1.2 Other matters

While GHD recognises the intent of the proposed reforms relating to Aboriginal or Macassan archaeological places, greater clarity is required regarding the role of Aboriginal stakeholders in the registration, assessment and approvals process. Although section 75(1)(d) of the Act requires the decision-maker to consider advice from the Aboriginal Areas Protection Authority where a heritage place or object is, or is within, a sacred site, the Act does not otherwise impose an explicit requirement to consult Aboriginal stakeholders. This appears to be a gap, particularly where a works approval is required for activities affecting an Aboriginal archaeological place or object that is not a sacred site. Clearer statutory guidance or policy direction on Aboriginal stakeholder engagement during assessment and works approval processes would strengthen the operation of the Act and improve confidence in heritage decision-making.

Additionally, it is recognised that there is a significant degree of variation in survey strategies being utilised in the Northern Territory. Specified survey standards and guidance regarding approvals pathways published by the Heritage Branch would aid in setting a benchmark for the heritage assessment process.

Finally, further clarification regarding time limits associated with offences would aid in establishing what constitutes a prosecutable offence under the Act.

Regards



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