



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

Inquiry into the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025

April 2025



Inquiry into the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025



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Chair's Preface

This report details the Committee's findings regarding its examination of the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025. Amending the *Northern Territory Aboriginal Sacred Sites Act 1989* and associated regulations, the Bill makes a number of amendments that seek to improve protections for sacred sites, reduce red tape and improve certainty and processes for economic development.

The Committee received 30 submissions to its inquiry. While submissions were generally supportive of the policy intent of the Bill, concerns were raised in relation to several of the proposed amendments as currently drafted.

Following its examination of the Bill, the Committee is of the view that the Assembly should pass the Bill with the proposed amendments as set out in recommendations 2-4. These recommendations seek to strengthen the legislation and ensure it is unambiguous and drafted in a sufficiently clear and precise manner.

Recommendation 2 proposes that, to ensure Ministerial nominees for members of the Aboriginal Areas Protection Authority have the capacity fulfil their obligations as members of the Authority, proposed section 6 be amended to include criteria or matters the Minister should take into account when nominating members of the Authority.

Recommendation 3 proposes that, to ensure the integrity of the original Authority Certificate is retained, consideration be given to amending the Bill to provide that the substance of the Authority Certificate is separated from the identity of the holders of the Certificate, such that the Certificate contains the substance of the given authority, including any conditions, with an addendum that identifies the holders of the Certificate.

Acknowledging the importance of ensuring custodians are notified of any Authority Certificate transfers and the name/s of the holder of the Certificate, recommendation 4 proposes that, if not covered by an existing process, proposed sections 24A and 24B be amended accordingly.

While beyond the scope of the current Bill, the Committee is of the view that if the Act is to be the subject of further reforms, consideration should be given to contemporisation of the legislation and incorporation of provisions similar to those in section 18 of the *Aboriginal Heritage Act 1972* (WA), whereby if the Minister becomes aware of new information about an Aboriginal site on land that is the subject of an Authority Certificate they may amend, revoke or confirm the Authority Certificate.

On behalf of the Committee I would like to thank all those who made submissions to the inquiry. The Committee also thanks Professor Aughterson and the representatives from the Aboriginal Areas Protection Authority and the Department of the Chief Minister for their advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Mrs Oly Carlson MLA
Chair

Committee Members

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Acknowledgments

The Committee acknowledges all those that provided written submissions to its inquiry.

Acronyms and Abbreviations

AAPA	Aboriginal Areas Protection Authority
AMEC	Association of Mining and Exploration Companies
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i>
CLC	Central Land Council
GYGM	Gudanji Yanywa Garra Marra Aboriginal Corporation
NLC	Northern Land Council
NTCA	Northern Territory Cattlemen's Association

Terms of Reference

Sessional Order 14

Establishment of Legislative Scrutiny Committee

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
 - (a) any bill referred to it by the Assembly;
 - (b) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal and Torres Strait Islander tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.

- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:
 - (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (4) The committee will provide an annual report of its activities to the Assembly.

Adopted 15 October 2024

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 with the proposed amendments set out in recommendations 2 - 4.

Recommendation 2

The Committee recommends that proposed section 6 be amended to include criteria or matters the Minister should take into account when nominating members of the Aboriginal Areas Protection Authority.

Recommendation 3

The Committee recommends that, to ensure the integrity of the original Authority Certificate is retained, consideration be given to amending the Bill to provide that the substance of the Authority Certificate is separated from the identity of the holders of the Certificate, such that the Certificate contains the substance of the given authority, including any conditions, with an addendum that identifies the holders of the Certificate.

Recommendation 4

The Committee recommends that, if not covered by an existing process, proposed sections 24A and 24B be amended to require that the Authority must notify custodians of any Authority Certificate transfers and the name/s of the holder/s of the Certificate.

1 Introduction

Introduction of the Bill

- 1.1 The Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (the Bill) was introduced into the Legislative Assembly by the Minister for Lands, Planning and Environment, the Hon Joshua Burgoyne MLA, on 27 March 2025. The Assembly subsequently referred the Bill to the Legislative Scrutiny Committee for inquiry and report by 7 May 2025.¹

Conduct of the Inquiry

- 1.2 On 27 March 2025 the Committee called for submissions by 4 April 2025. The call for submissions was advertised via the Legislative Assembly website, Facebook, and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As set out in Appendix 1, the Committee received 30 submissions to its inquiry. On 1 April 2025, the Committee held a public briefing with representatives from the Aboriginal Areas Protection Authority and the Department of the Chief Minister and Cabinet (see Appendix 2).

Outcome of Committee's Consideration

- 1.4 Sessional Order 14 requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (v) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2 – 4.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 with the proposed amendments set out in recommendations 2 – 4.

¹ Hon Joshua Burgoyne MLA, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 6 – 27 March 2025*, <https://territorystories.nt.gov.au/10070/992990>, p. 12

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 In presenting the Bill, the Minister noted that the precursor to the *Northern Territory Aboriginal Sacred Sites Act 1989*, the *Aboriginal Sacred Sites Act 1978*, was one of the first Acts to be passed by the Legislative Assembly following self-government.² Establishing the Aboriginal Areas Protection Authority and providing the framework for the registration and protection of sacred sites in the Northern Territory, the intended purpose of the Act is to:

Effect a practical balance between the recognized need to preserve and enhance Aboriginal cultural tradition in relation to certain land in the Territory and the aspirations of the Aboriginal and all other peoples of the Territory for their economic, cultural and social advancement ...³

2.2 Noting that there have been considerable economic, political and social developments since the Act commenced operation, Minister Burgoyne advised the Assembly that the amendments contained in the Bill “would be the first significant amendments to the Act since 1989 and implement recommendations from a 2016 PwC review.”⁴

2.3 That review made 39 recommendations focussing on:

- Trust and Transparency;
- Consistency and Certainty;
- Strengthening Protection;
- Improving processes for economic development; and
- Operations of the Authority.⁵

Purpose of the Bill

2.4 Amending the *Northern Territory Aboriginal Sacred Sites Act 1989* and associated regulations, the Explanatory Statement notes that the Bill seeks to:

ensure the Act and the Regulations are both contemporary and remains effective in achieving its purpose. The Bill also makes amendments to improve protections for sacred sites, reduce red tape and improve certainty and processes for economic development, and ways in which the Aboriginal Areas Protection Authority can become more efficient.⁶

² Hon Joshua Burgoyne MLA, Minister for Lands, Planning and Environment, *Draft Daily Hansard H- Day 6* – 27 March 2025, <https://territorystories.nt.gov.au/10070/992990>, p. 9

³ Hon Joshua Burgoyne MLA, Minister for Lands, Planning and Environment, *Draft Daily Hansard H- Day 6* – 27 March 2025, <https://territorystories.nt.gov.au/10070/992990>, p. 10

⁴ ABC News, *NT government to 'streamline' sacred site laws in bid to reduce red tape*, Tuesday 25 March 2025, [NT government to 'streamline' sacred site laws in bid to reduce red tape - ABC News](https://www.abc.net.au/news/2025-03-25/nt-government-to-streamline-sacred-site-laws-in-bid-to-reduce-red-tape/105444444)

⁵ PwC's Indigenous Consulting, *Sacred Sites Processes and Outcomes Review*, [Sacred Sites Processes and Outcomes Review - PwC's Indigenous Consulting - 26 April 2016](https://www.pwc.com/au/indigenous-consulting/sacred-sites-processes-and-outcomes-review)

⁶ Explanatory Statement, *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p.1

3 Examination of the Bill

Introduction

3.1 As noted previously, the Committee received 30 submissions to its inquiry. While the majority of submitters were generally supportive of the policy intent of the Bill, concerns were raised in relation to several of the proposed amendments as currently drafted. Clarification was also sought regarding the intended operation of some clauses and a number of submissions put forward suggestions as to how the Bill might be improved.

3.2 Many of the submissions received were of the view that the Bill does not go far enough and should incorporate more of the recommendations that were put forward in PwC's 2016 *Sacred Sites Processes and Outcomes Review* (PwC Review).⁷ For example, the Gudanji Yanyuwa Garrwa Marra Aboriginal Corporation (GYGM) pointed out that:

Aboriginal people have long been calling for other amendments to the Act, not contemplated in this bill, that would improve protection of sacred sites while increasing certainty for all stakeholders.⁸

3.3 The Aboriginal Areas Protection Authority (AAPA) and Karen Martin-Stone suggested that the Bill should be expanded to 'more thoroughly modernise the Act to account for the complexity of the current operating environment.'⁹ The Association of Mining and Exploration Companies (AMEC) noted that 'future reforms will need to build a legislative pathway to achieve the key themes of trust and transparency that the PwC Report named as the key ingredients for future success.'¹⁰

3.4 The majority of submissions also voiced their concern regarding the lack of consultation and limited timeframe within which to comment on the Bill. As noted by the Central Land Council (CLC):

There has been no genuine consultation about the Bill with the CLC or the people it represents. A token meeting was called by the Minister on 20 March 2025 at which little detail was provided, notwithstanding that draft legislation had already been prepared and was introduced into Parliament a week later. CLC's Executive committee were very clear with the Minister that they did not consent to the Bill nor regard that meeting as adequate consultation. Nor does a one week comment period to the Scrutiny Committee constitute adequate consultation.

Aside from media commentary following press releases by the Aboriginal Areas Protection Authority (AAPA) Board and Territory Land Councils, there has been little public coverage, and no government-run education campaign targeted at those whose sites will be affected. This further reduces their

⁷ PwC's Indigenous Consulting, *Sacred Sites Processes and Outcomes Review*, [Sacred Sites Processes and Outcomes Review - PwC's Indigenous Consulting - 26 April 2016](#)

⁸ Gudanji Yanyuwa Garrwa Marra Aboriginal Corporation (GYGM), Submission No. 14, pp. 3-4

⁹ Karen Martin-Stone, Submission No. 1, p. 3; see also Committee Transcript, *Public Briefing - 1 April 2025*, pp. 5-6

¹⁰ Association of Mining and Exploration Companies (AMEC), Submission No. 30, p. 3

ability to contribute to the development of appropriate legislation or make comment to the Scrutiny Committee about the Bill in the very limited timeframe. ...

The CLC maintains its first recommendation from its 2015 submission: that no amendments be made to the Act without first obtaining the explicit consent of the AAPA Board and the four Territory Land Councils. That has not occurred here.¹¹

- 3.5 The following discussion is, however, limited to a consideration of the main areas of concern identified by submitters regarding proposed amendments to the composition of the Aboriginal Areas Protection Authority and associated termination provisions; transfer of Authority Certificates and recorded parties; and enforceable undertakings.

Composition of Aboriginal Areas Protection Authority

- 3.6 Clause 5 amends section 6 (Composition of Authority) of the *Northern Territory Sacred Sites Act 1989* (the Act) to modernise the language and clarify the composition of the Aboriginal Areas Protection Authority. As highlighted in the Explanatory Statement:

The majority of the Authority's members (10 out of 12) are Aboriginal members nominated by the Land Councils to ensure strong representation of traditional owners. It has been longstanding practice that the 2 remaining members are nominated by the Minister. New section 6(2A) formalises this practice and enables 2 members of the Authority to be persons appointed on the nomination of the Minister. The Minister's ability to nominate 2 members provides a mechanism to introduce perspectives that reflect broader policy objectives, development, heritage, and governance considerations. This balance is essential to ensure that decisions made by the Authority take into account a wider range of interests, including economic and social factors.¹²

- 3.7 As recommended in the PwC review¹³, several submitters were of the view that ministerial appointments to the AAPA should be based on relevant skills and experience. For example, the Northern Territory Cattlemen's Association (NTCA) suggested that:

consideration should be preferentially applied by the Minister to his nominees based on both (a) their knowledge of the broader legislative framework within the Territory and how the intersection of the Act affects these and (b) a strong understanding of the activities of industry in the Territory that most often intersect with the operations of the Act.¹⁴

- 3.8 The Northern Land Council (NLC) considered that:

A criteria for independent members must be developed and included in the legislation to ensure that any Ministerial appointment has the relevant skills, knowledge, experience and *lived experience of sacred sites*, to be an

¹¹ Central Land Council (CLC), Submission No. 26, pp. 5-6; see also Submission Nos: 1, 2, 5, 6, 9, 10, 13, 14, 16, 17, 18, 19, 21, 25, 26, 28, and 29

¹² Explanatory Statement, Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p. 2

¹³ PwC's Indigenous Consulting, *Sacred Sites Processes and Outcomes Review*, [Sacred Sites Processes and Outcomes Review - PwC's Indigenous Consulting - 26 April 2016](#) pp. 55-57

¹⁴ Northern Territory Cattlemen's Association, Submission No. 15, p. 2

appropriate member of the Board of the Authority. This criteria should be developed in further consultation with Traditional Owners and the Board of the Authority.¹⁵

Committee's Comments

- 3.9 Apart from ensuring that AAPA members nominated by the Minister have the capacity to fulfil their obligations as members of the Authority, the Committee is of the view that a more transparent appointment process may serve to allay concerns about the potential for political interference.
- 3.10 As such, the Committee agrees with submitters that the Bill should be amended to include criteria or matters the Minister should take into account when nominating members of the Aboriginal Areas Protection Authority.

Recommendation 2

The Committee recommends that proposed section 6 be amended to include criteria or matters the Minister should take into account when nominating members of the Aboriginal Areas Protection Authority.

Termination of Membership

- 3.11 Clause 6 amends section 7 (Resignation and termination of membership) to modernise the language and inserts new sections 7(3A) and 7(3B) to allow the Minister, at his or her discretion, to recommend in writing to the Administrator the termination of membership of a member who was appointed on the Minister's nomination under the new section 6(2A). As noted in the Explanatory Statement:

These provisions allow for broader removal powers which reflect that such persons are the Minister's own nominees. ... The power to terminate the Minister's nominated members allows for action at the Minister's discretion including but not limited to where a member is not performing effectively, has a conflict of interest, or is acting contrary to the best interests of the Authority. This ensures that the Authority remains functional, credible, and responsible to evolving policy and community needs.¹⁶

- 3.12 A number of submitters expressed their concern that the new sections 7(3A) and 7(3B) have the potential to undermine the integrity and independence of the Authority.¹⁷ As AAPA noted:

The proposed amendments grant the Minister discretionary power to recommend the removal of government-nominated Authority members, without any requirement for cause or justification. This represents a significant shift in governance that threatens the independence of the Authority.

Unlike the carefully structured process for Aboriginal member appointments, where nominations come from the Land Councils and removals must be

¹⁵ Northern Land Council, Submission No. 25, p. 6

¹⁶ Explanatory Statement, Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p. 2

¹⁷ See for example, Submission Nos 1, 2, 6, 23, 25, 26 and 28.

justified on clear grounds, government-nominated members could now be removed at will. This introduces the potential for political interference.

Over its 45-year history, government-nominated members have played a critical role in maintaining stability and ensuring that the Authority operates independently and in accordance with its statutory mandate. These amendments create a pathway for governments to exert undue influence over the Authority's decision-making, particularly in cases where its responsibilities to protect sacred sites conflict with government development priorities.

The Authority's credibility relies on its ability to operate free from political pressure, and any changes that weaken this independence risk eroding public, industry, and Aboriginal trust in its ability to uphold the protections enshrined in the Sacred Sites Act.¹⁸

- 3.13 It was also suggested that termination of the Minister's nominated members at the Minister's discretion is inconsistent with the principles of natural justice and 'introduces inequality between them and the other members of the Authority.'¹⁹

Committee's Comments

- 3.14 The Committee notes that, pursuant to section 12(7)(a) of the Act, seven of the 12 members constitute a quorum for meetings of the Authority; not less than 2 of whom must be male Aboriginal members and not less than 2 of whom must be female Aboriginal members.
- 3.15 Given that the Aboriginal members always represent a majority at meetings of the Authority and any questions arising are determined by a majority of the votes of the members present, the Committee questions the extent to which the proposed provisions for the termination of Ministerial appointees is likely to exert undue influence over the Authority's decision-making.
- 3.16 As such, the Committee is of the view that it is not inappropriate for the Minister to recommend to the Administrator, at their discretion, the termination of one of their own nominees should they consider it is warranted.

Authority Certificates

- 3.17 Clause 7 inserts sections 24A (Transfer of Certificate) and 24B (Recorded parties for Certificate). As noted in the Explanatory Statement, section 24A establishes:
- a mechanism for transferring an Authority Certificate to increase process efficiencies when prior consultations have already been undertaken in respect of the same area of land and work or use of the land where an Authority Certificate has previously been issued.²⁰

Section 24B then clarifies that:

¹⁸ Aboriginal Areas Protection Authority (AAPA), Submission No. 28, pp. 8-9

¹⁹ Karen Martin-Stone, Submission No. 1, p. 3

²⁰ Explanatory Statement, Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p. 2

Certain people or groups can be listed as recorded parties on an Authority Certificate. This could be a specific person, or a group of people (e.g. those who work on or make use of the land covered by the Certificate).

In addition, section 24B also establishes a mechanism where the holder of an existing Authority Certificate can apply to have additional people or groups added as recorded parties.²¹

3.18 While acknowledging the utility of the new sections 24A and 24B, significant concern was raised regarding the absence of any consultation requirements and, as a consequence, whether the new provisions are consistent with section 73(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (the ALRA) and section 42 (Wishes of Aboriginals to be taken into account) of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (the Act).²²

3.19 Concern was also raised that the wording of proposed section 24A(4)(a), which provides that new Authority Certificates must be issued ‘in respect of the same land and work or use of the land that were the subject of the existing Certificate’, is ‘broad, open to interpretation and corruption.’²³

3.20 In relation to the Darwin Waterfront Development, the Larrakia Nation Aboriginal Corporation expressed concern that the introduction of sections 24A and 24B:

creates a mechanism by which historical Authority Certificates may be revived and re-purposed to support new developments, effectively bypassing current negotiations and cultural assessment processes. ... It undermines the fundamental principle that cultural authority and consent must be current, site-specific, and grounded in active engagement with custodians. The proposed amendment enables a retrospective application of consent that was never provided for the current proponent, project design or intended use.²⁴

3.21 The Committee notes that section 73(1)(a) of the ALRA provides that the power of the Legislative Assembly of the Northern Territory in relation to the making of laws extends to the making of:

laws providing for the protection of, and the prevention of the desecration of, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and, in particular, laws regulating or authorizing the entry of persons on those sites, but so that any such laws shall provide for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected.²⁵

3.22 Section 42 of the Act provides that:

Before exercising a power under this Act in respect of a sacred site, the Authority or the Minister, as the case may be, shall take into account the

²¹ Explanatory Statement, Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p.3

²² See for example Submission Nos: 1, 2, 5, 9, 10, 13, 14, 15, 16, 18, 19, 21, 23, 25, 26 and 28

²³ Nurrdalinji Native Title Aboriginal Corporation, Submission No. 13, p.4

²⁴ Larrakia Nation Aboriginal Corporation, Submission No. 23, p. 3

²⁵ *Aboriginal Land Rights (Northern Territory) Act 1976* (NT), s 73(1)(a)

wishes of Aboriginals relating to the extent to which the sacred site should be protected.²⁶

- 3.23 Given the concerns raised in submissions regarding consistency with the aforementioned provisions, the Committee sought advice from its independent legal counsel, Professor Ned Aughterson. As noted in the Explanatory Statement, Professor Aughterson agreed that, in his view, proposed sections 24A and 24B are not inconsistent with the ALRA or section 42 of the Act:

Section 24A allows for the transfer to another person of an existing Authority Certificate, while s 24B allows for one or more persons to be added to the Certificate as a recorded party or parties. In either event, a new certificate is issued. However, the new Authority Certificate must be issued in respect of the same land or work or use of the land and with the same conditions as under the existing certificate. In other words, any change extends only to the identity of those who will supervise or carry out any approved work under the Authority Certificate ...

Where entry is approved for a particular purpose, for example the carrying out of specified public or private works, that purpose might be ongoing for a considerable period of time, and perhaps indefinitely. In those circumstances, it is almost inevitable that the related individuals or workforce will change from time to time. It cannot have been intended that each and every time there is entry, for example, by a new worker there is a need to take into account the wishes of Aboriginal people. That would render any project unwieldy and perhaps unworkable. It is to be imagined that the nature and duration of any project and the size and variability of any workforce would, at the outset, have been the subject of the required consultation with Aboriginal people relating to the extent to which a relevant site should be protected.

More generally, inevitably administrative processes will be set in place and determinations made to enable any allowed work to proceed following consultation and the making of a decision as to the extent to which the sites should be protected. Again, those processes and determinations could be numerous and arise over an extended period of time and would make any project unwieldy if there were a need for consultation before taking each and every step.

Even without the present amendments, particularly where the holder of an Authority Certificate is a corporation (by s 24AA of the *Interpretation Act*, a 'person' includes a corporation), the identity of individuals or employees who will carry out any approved work may change from time to time, as might its directors, particularly where the Authority extends over a significant period of time or indefinitely. Also, presumably, the existing Authority Certificate will remain where there are new 'owners' or shareholders of a corporation that holds an Authority Certificate. Sections 24A and 24B extend the potential approved persons to transferees and to additional recorded parties. That, of course, also relates to who may carry out the approved work. It does not change the nature or scope of the work to be undertaken.

For the reasons given above, in my view it was not the intent of s 73(1)(a) of the ALRA that the wishes of Aboriginal people should be taken into account in relation to the circumstances arising under ss 24A and 24 B of the Sacred Sites Act.

²⁶ Northern Territory Aboriginal Sacred Sites Act 1989 (NT), s 42

Section 42 refers to circumstances where a 'power' is being exercised and, in effect, draws a distinction between the exercise of a 'power' and a 'function'. Broadly, in the present context, an exercise of power involves the making of a decision that affects rights and has legal consequences, such as the issuing of an Authority Certificate under s 22 of the Sacred Sites Act. On the other hand, the 'functions' of the Authority are set out at s 10 of the Act and include matters such as carrying out research and maintaining registers.

Sections 24A and 24B do not involve the exercise of a power on the part of the Authority, but rather an administrative function in issuing a fresh Certificate. That is because the Authority has no decision making or discretionary power. Where an application is made for the transfer or recording of parties, providing the application is in the prescribed form and the prescribed fee is paid, the Authority 'must' issue the new Certificate.²⁷

- 3.24 Professor Aughterson further advised that, in part, potential confusion or concern might arise because, as drafted, whenever ss 24A or 24B is invoked, a new Authority Certificate is issued, which might contribute to the perception that consultation with Aboriginal people should start afresh. As such, and to avoid any doubt that the transfer of an Authority Certificate is only applicable where there is no change to the scope or nature of the work or the associated protective conditions, Professor Aughterson noted that:

In terms of legislative drafting, there is a question of whether it would be preferable to separate the substance of the Authority Certificate from the identity of the holders of the Certificate. For example, in appropriate cases the Certificate could contain the substance of the given authority, including any conditions, while an addendum could identify the holders of the Certificate. On that basis, the certificate would remain constant and only the addendum would change from time to time. From a practical and perceptual perspective, that might assist in retaining the integrity of the Certificate and more clearly separate the authorised activity, determined after consultation with Aboriginal people, from the individuals who will carry out any of the allowed work from time to time. It might also reduce the risk of administrative error in transcription, which could arise where a fresh Certificate is issued. On the other hand, where the identity of the individual is central to the giving of the authority and where it is for a limited purpose, an addendum might be superfluous.²⁸

- 3.25 The Committee notes that this is not dissimilar to the process used in Western Australia whereby Ministerial decisions regarding the transfer of consent (equivalent to the transfer of a Authority Certificate) are published separately to the original consent decision, which details the substance of the consent and associated conditions.²⁹ In South Australia, Aboriginal Heritage Agreements attach to the land and are binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.³⁰
- 3.26 A number of submissions expressed the view that the Authority should be afforded a decision making and discretionary power in relation to both sections

²⁷ Professor Ned Aughterson, *Legal Advice on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025*, (unpublished), 13 April 2025, pp. 3-5

²⁸ Professor Ned Aughterson, *Legal Advice on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025*, (unpublished), 13 April 2025, p. 3

²⁹ *Aboriginal Heritage Act 1972* (WA), s 18B(2)

³⁰ *Aboriginal Heritage Act 1988* (SA), s 37A(2)

24A and 24B. For example, while acknowledging that, in the majority of cases, the transfer of an Authority Certificate would be 'completely uncontroversial', AAPA noted that there 'will be some instances where certificates, for a variety of reasons, may not be fit for the purpose of transfer.'³¹

3.27 AAPA further noted that not affording the Authority discretion to review certificates and assess whether contemporary custodians consent to the continued use of a certificate may prove problematic:

- Loss of relevance over time – Some Authority Certificates may be decades old. The works or land use originally assessed and consulted on may no longer align with the contemporary setting. Automatic transfers could allow outdated certificates to apply to fundamentally different projects in a contemporary setting.
- Uncertainty about whether a certificate is still valid – A certificate may have been issued for a project that was never completed, partially completed, or significantly altered. Or the works for which a certificate was issued may have been completed. In such cases, the certificate may be spent. The amendments do not account for such cases, creating potential legal ambiguity.
- Lack of engagement with contemporary custodians – The original custodians consulted during an assessment process may have passed away. Transferring a certificate without new consultation excludes the wishes of the current custodians who hold cultural authority over the area and their sacred sites.
- Potential for inappropriate recipients – A certificate issued to one entity may not be appropriate for another. The amendments remove the ability to assess whether a transferee is a fit and proper entity to hold the certificate. This increases the potential disputation and legal risks associated with a party who, for example, has a conflict of interest, is in a legal dispute with custodians, a poor compliance history, or history of inappropriate behaviour towards custodians.³²

In relation to proposed section 24B, AAPA further noted that:

While adding additional parties to a certificate may be useful for recognising new stakeholders or accommodating multiple parties involved in land use, this flexibility must be balanced with safeguards that ensure the ongoing involvement and consent of Aboriginal custodians.³³

3.28 Similar concerns were expressed by GYGM and the NLC. As the NLC pointed out:

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

The Juukan Gorge inquiry is an illustrative example: in that case, an important Aboriginal site was destroyed in 2020 as Rio Tinto had permission to do so pursuant to a permit issued in 2013. Since that time, more information had

³¹ Committee Transcript, *Public Briefing* – 1 April 2025, p. 3

³² AAPA, Submission No. 28, pp. 9-10

³³ AAPA, Submission No. 28, p. 10

come to light as to the significance of the site. As a result of the damage, the Western Australian government amended the relevant legislation in 2023 to allow permits to be varied where 'new information' comes to light. Such a course is appropriate here.

The current wording of ss 24A and 24B does not allow scope for amending transferred Authority Certificates. This creates a risk to the incoming transferee, who may inherit an out-of-date certificate and complete works in accordance with incorrect information. This leaves a situation where transferees may complete works in good faith which nevertheless cause damage or interference. This will leave transferees vulnerable to prosecution under the *Land Rights Act* and/or further penalty under Northern Territory and Commonwealth heritage legislation.

Noting that such a situation is contrary to the interests both of the Traditional Owners and transferees, the NLC strongly recommends the Bill be amended to prevent such a situation.³⁴

GYGM also recommended that section 24A be amended to provide that 'custodians are to be notified of the transfer of a certificate.'³⁵ In recommending that the Act be amended to provide for the transfer of Authority Certificates, the Committee notes that the PwC report acknowledged that:

It would be important for custodians to be notified by the Authority of any Authority Certificate transfers including being provided with the name of the holder.³⁶

3.29 Given the above, it might be argued that, irrespective of the proposed introduction of sections 24A and 24B, it may be prudent to review Authority Certificates whenever new information comes to light about an Aboriginal site that is on land that is the subject of an Authority Certificate. With regards to the recent amendments to the *Aboriginal Heritage Act 1972* (WA), the Committee notes that section 18(6A) provides that if the Minister becomes aware of new information about an Aboriginal site on land that is the subject of a section 18 consent (equivalent to an Authority Certificate), the Minister may, having regard to the general interest of the community:

- amend a section 18 consent by amending the conditions to which it is subject, imposing new conditions or changing the specification of the land to which it relates;
- revoke the consent;
- revoke the consent and give a new consent;
- confirm the consent.³⁷

3.30 Pursuant to section 18(6) the owner (or lessee) of land that is subject to a consent is required to notify the Minister if, on or after the day consent is given, they

³⁴ NLC, Submission No. 28, pp. 7-8; see also GYGM, submission No. 14, pp. 2-3

³⁵ GYGM, submission No. 14, p. 3

³⁶ PwC's Indigenous Consulting, *Sacred Sites Processes and Outcomes Review*, [Sacred Sites Processes and Outcomes Review - PwC's Indigenous Consulting - 26 April 2016](#) p. ix

³⁷ *Aboriginal Heritage Act 1972* (WA), s 18(6A) Note: new information includes information about an Aboriginal site on the land, other than information that a person who made a decision to give, amend or confirm the consent was made aware of for the purposes of making the decision pursuant to s 18(1AA)

become aware of any new information about an Aboriginal site on the land that is the subject of the consent. In this case, the Minister must make a decision under subsection (6A).³⁸

Committee's Comments

- 3.31 The Committee is satisfied that the provisions contained in proposed sections 24A and 24B are consistent with both section 73(1)(a) of the ALRA and section 42 of the Act. As noted in the Explanatory Statement and the advice provided by Professor Aughterson, the new transfer and recorded parties provisions are administrative in nature and do not involve the exercise of a power on the part of the Authority.
- 3.32 While beyond the scope of the current Bill, the Committee is of the view that if the Act is to be the subject of further reforms, consideration should be given to contemporisation of the legislation and incorporation of provisions similar to those in section 18 of the *Aboriginal Heritage Act 1972* (WA), whereby if the Minister becomes aware of new information about an Aboriginal site on land that is the subject of an Authority Certificate they may amend, revoke or confirm the Certificate of Authority.
- 3.33 To ensure the integrity of the original Authority Certificate is retained, the Committee recommends that consideration be given to amending the Bill to provide that, where applicable, the substance of Authority Certificates is separated from the identity of the holders of the Certificate, such that the Certificate contains the substance of the given authority, including any conditions, with an addendum that identifies the holders of the Certificate.
- 3.34 As proposed in the PwC report, the Committee also considers that section 24A should be amended to require that the Authority must notify custodians of any Authority Certificate transfers including being provided with the name/s of the holder/s.

Recommendation 3

The Committee recommends that, to ensure the integrity of the original Authority Certificate is retained, consideration be given to amending the Bill to provide that the substance of the Authority Certificate is separated from the identity of the holders of the Certificate, such that the Certificate contains the substance of the given authority, including any conditions, with an addendum that identifies the holders of the Certificate.

Recommendation 4

The Committee recommends that, if not covered by an existing process, proposed sections 24A and 24B be amended to require that the Authority must notify custodians of any Authority Certificate transfers and the name/s of the holder/s of the Certificate.

³⁸ *Aboriginal Heritage Act 1972* (WA), s 18(6)

Enforceable Undertakings

- 3.35 Clause 9 inserts Part IVA (Enforceable undertakings), which includes new sections 39B to 39H. Modelled on Part VA, Division 2 of the *Petroleum Act 1984*, the Explanatory Statement notes that Part IVA:

establishes a process for the Authority to enter into enforceable undertakings with a person in relation to an alleged contravention of the Act or a term or condition of an Authority Certificate. The purpose of enforceable undertakings is to achieve better compliance with the Act than would result from criminal or civil enforcement action alone. They are an alternative to criminal or other civil enforcement and are common in many modern environmental and development legislative regimes. They provide a useful tool for the Authority to continue to ensure rigorous protections of sacred sites in the Northern Territory and ensure they have increased powers to ensure remediation occurs where there are any issues.³⁹

- 3.36 While the majority of submissions received welcomed the introduction of enforceable undertakings, several submissions registered their opposition to the proposed amendments. For example, the CLC expressed the view that:

Allowing enforceable undertakings changes the focus of the Act. Instead of emphasising protection of sites, it provides a mechanism to avoid prosecution for damaging sacred sites. This risks allowing damage to sites to become merely a cost of doing business.⁴⁰

- 3.37 Similarly, the NurrDALinji Native Title Aboriginal Corporation noted that they were concerned that:

this scheme for enforceable undertakings (ss39B-H) is being introduced to favour developers who breach the Act by making available a more lenient form of punishment than those currently available and allowing serious breaches to be sidelined from consideration by the court system.⁴¹

- 3.38 However, the NLC considered that:

an enforceable undertaking regime could provide a further regulatory tool for the protection of sacred sites, and that by providing an alternative to prosecution, the regime may equip the Authority with a quicker, more direct and satisfactory outcome for custodians than prosecution may achieve. In particular, the NLC welcomes the introduction of a regime which allows for broader remedies than mere pecuniary penalties, such as through remediation orders.⁴²

- 3.39 Karen Martin-Stone further noted that, as an alternative to civil or criminal prosecution, enforceable undertakings:

provide much needed flexibility in the way legislation is enforced. It can be particularly effective in the heritage management space, especially when the undertakings involve a commitment to educate broader sections of relevant

³⁹ Explanatory Statement, Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23), <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>, p.3

⁴⁰ CLC, Submission No. 26, p. 8

⁴¹ NurrDALinji Native Title Aboriginal Corporation, Submission No. 13, p. 4

⁴² NLC, Submission No. 25, p. 10

industries on compliance, in addition to restitution and, where possible, restoration.⁴³

3.40 AMEC also pointed out that:

enforceable undertakings are a protection mechanism used across several different environmental and safety legislative frameworks. As a tool, it has the benefit of being outcomes-focused and more expeditious than embarking on legal processes or levying a fine.⁴⁴

3.41 Nevertheless, as discussed below, the NLC, and others that supported the introduction of enforceable undertakings, raised concerns regarding the scope of the regime; the absence of consultation requirements; and AAPA's capacity to effectively administer the scheme.

Scope of the Regime

3.42 Several submissions expressed the view that 'while enforceable undertakings may be suitable for minor violations, they are ill-suited for serious breaches where sacred sites are harmed.'⁴⁵ The NLC suggested that the Bill be amended to remove a contravention of section 35 (Desecration) from the operation of Part IVA:

Due to the seriousness of the harm involved, the NLC does not consider an enforceable undertaking is an appropriate remedy for desecration of a site under s 35 of the Act. The following factors necessitate the inappropriateness of an enforceable undertaking to address this type of offending:

- (a) the seriousness of the harm involved in desecration offending; and
- (b) that by s 39C(5), the giving of an enforceable undertaking does not constitute an admission of guilt by the undertaker.

In such cases, the admission of guilt by the offender and providing an opportunity for those harmed to be heard by the Court system are necessary to remedy the harm done. For this reason, the NLC considers that contraventions of s 35 should be removed from the ambit of the Enforceable Undertaking regime.⁴⁶

The NLC subsequently recommended that, similar to Part 11 of the *Work Health Safety (National Uniform Legislation) Act 2011* (NT), consideration be given to a graded system whereby offences under section 35 of the Act would be excluded from the operation of Part IVA.⁴⁷

3.43 However, the Committee notes that section 39C(2) relevantly provides that before accepting an enforceable undertaking, the Authority must consider:

- (a) the nature and gravity of the conduct constituting the alleged contravention;
- (b) if applicable, the maximum penalty provided for the alleged contravention;
- (c) the benefits of the proposed undertaking and the public interest;

⁴³ Karen Martin-Stone, submission No. 1, p. 6

⁴⁴ AMEC, Submission No. 30, p. 3

⁴⁵ Clare Merritt, Submission No. 2, p. 1; see also Submission Nos: 5, 23 and 28

⁴⁶ NLC, Submission No. 25, pp. 10-11

⁴⁷ NLC, Submission No. 25, p. 11

- (d) the interests of justice;
- (e) any other factors that the Authority considers relevant.

3.44 Pursuant to section 35 of the Act, desecration of a sacred site carries a maximum penalty of 2 years imprisonment or 400 penalty units (\$74,000) for a natural person, and a maximum penalty of 2,000 penalty units (\$370,000) in the case of a body corporate.⁴⁸ The Committee further notes that proposed section 39C(4) requires the Authority to publish notice of its decision to accept an enforceable undertaking and the reasons for that decision.

Committee's Comments

3.45 While acknowledging the concerns raised, the Committee is of the view that the new section 39C incorporates an appropriate level of direction to ensure that consideration by the Authority of any proposed enforceable undertakings relating to contraventions of section 35 will take into account all relevant factors.

Consultation Requirements

3.46 While representatives from the Department of the Chief Minister and Cabinet noted that the Authority's acceptance of an enforceable undertaking will be contingent on whether it is considered appropriate and 'what is suitable for the traditional owners of the land'⁴⁹, submitters noted that proposed section 39C does not include any requirement to consult with custodians prior to accepting an undertaking.⁵⁰ The NLC further suggested that, as such, this would contravene the requirements of section 73(1)(a) of the ALRA.⁵¹

3.47 GYGM noted that before accepting an enforceable undertaking it was their expectation that, where relevant and consistent with section 42 of the Act, custodians would be consulted:

Under 39B(2), an enforceable undertaking may include carrying out of remediation work to rectify damage. It is essential that any plan to undertake remediation work is developed in collaboration with custodians ...⁵²

3.48 With regards to consistency with the ALRA and section 42 of the Act, Professor Aughterson advised that, in his view, the new provisions as set out in Part IVA are not inconsistent with s 73(1)(a) of the ALRA. However, Professor Aughterson further noted that given the way in which section 42 is framed, in his view, sections 39B to 39H would be subject to the operation of section 42:

First, it is noted that the provisions at ss 39C to 39F, unlike those at ss 24A and 24B, do involve an exercise of 'power' in so far as they vest a discretion

⁴⁸ For the period 1 July 2024 – 30 June 2025 the value of a penalty unit is set at \$185.00, <https://agd.nt.gov.au/attorney-general-and-justice/units-and-amounts/penalty-units>

⁴⁹ Committee Transcript, *Public Briefing – 1 April 2025*, p. 11

⁵⁰ See for example, Larrakia Nation Aboriginal Corporation, Submission No. 23, p.2; NLC, Submission No. 25, p. 11; CLC, Submission No. 26, p. 8

⁵¹ NLC, Submission No. 25, p. 11

⁵² GYGM, Submission 14, p. 3

in the Authority the exercise of which affects rights and has legal consequences. Indeed, s 39E is headed 'Power of Authority to take action'.

Leaving that to one side, it is noted that the operation of s 42 is simply premised on the exercise of a power 'in respect' of a sacred site. The term 'in respect of' is potentially broad and, on its ordinary meaning, requires only that the exercise of power have a connection with a sacred site. Arguably, by the terms of s 42, it follows that whenever there is a prospective exercise of any power 'in respect of' a sacred site, the Authority is required to take into account the wishes of Aboriginal people relating to the extent to which the sacred site should be protected.⁵³

Committee's comments

- 3.49 Noting that there is nothing in proposed Part IVA that precludes consultation with custodians prior to accepting an enforceable undertaking, and taking into consideration Professor Aughterson's advice that the exercise of power under sections 39C to 39F would necessarily be subject to the operation of section 42, the Committee is of the view that amending the Bill to specifically incorporate consultation requirements in section 39C is unnecessary.

Administration of the Scheme

- 3.50 The Nurrdalinji Native Title Aboriginal Corporation questioned whether AAPA has the necessary investigative and compliance powers required to properly administer the proposed enforceable undertakings scheme.⁵⁴ While supporting the introduction of the scheme, AAPA noted that:

The proposed enforceable undertaking provisions are modelled on provision in the *Petroleum Act 1984*. However, enforceable undertakings under that Act exist within a broader compliance and enforcement framework that includes investigative powers, compliance monitoring, and sanctions for breaches.

The amendment Bill does not include these complimentary mechanisms for enforcement, regulatory oversight, and the protection of sacred sites.

The Authority has no explicit power to compel information, conduct site inspections, or verify compliance with an undertaking. This creates a significant enforcement gap and reduces accountability for non-compliance.

These powers have been the subject of previous recommendations to amend the Sacred Sites Act, but are not included in the current bill.⁵⁵

- 3.51 The Committee notes that during the public briefing on the Bill, representatives from the Department of the Chief Minister and Cabinet advised that:

In addition, and separate to the work progressing with the Bill, we are progressing at the same time, regulations to enable AAPA to issue infringement notices as an additional regulatory tool and a complementary tool for the enforceable undertakings, also providing additional protections

⁵³ Professor Ned Aughterson, *Legal Advice on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025*, (unpublished), 13 April 2025, pp. 3-5

⁵⁴ Nurrdalinji Native Title Aboriginal Corporation, Submission No. 13, p. 4

⁵⁵ AAPA, Submission No. 28, p. 11

for sacred sites while reducing unnecessary delays in the regulatory framework that exist now.⁵⁶

Committee's Comments

3.52 Apart from updating the regulations to enable AAPA to issue infringement notices, it is unclear whether the regulations will incorporate any other powers to facilitate AAPA's administration of the enforceable undertakings scheme. As such, the Committee considers it would be prudent for the Government to monitor AAPA's capacity to effectively administer the scheme going forward.

⁵⁶ Committee Transcript, *Public Briefing* – 1 April 2025

Appendix 1: Submissions Received

Submissions Received

1. Karen Martin-Stone
2. Clare Merritt
3. Urapunga Aboriginal Corporation
4. Abigail Merritt
5. Sujay Kentlyn
6. Namultja Aboriginal Corporation
7. Australian Energy Producers
8. Mabunji Aboriginal Resource Indigenous Corporation
9. Justin Tutty
10. Grusha Leeman
11. Department of Tourism and Hospitality
12. Australia's First Treaty
13. Nurrdalindi Native Title Aboriginal Corporation
14. Gudanji Yanyuwa Garrwa Marra Aboriginal Corporation
15. Northern Territory Cattlemen's Association
16. Yangamini
17. Jane Marr
18. Philippa Rowland
19. Lorraine Gibson Napaltjari
20. Kybrook Community Aboriginal Corporation
21. Environmental Defenders Office
22. NT Heritage Council
23. Larrakia Nation Aboriginal Corporation
24. Naomi Rea
25. Northern Land Council
26. Central Land Council and Addendum at 26A
27. Minerals Council of Australia
28. Aboriginal Areas Protection Authority
29. Jacqueline Arnold and Adrian Tomlinson
30. Association of Mining and Exploration Companies

Note: Copies of submissions and public briefing transcripts are available at:
<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>

Appendix 2: Public Briefings

Public Briefing – Darwin – 1 April 2025

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
- Chris Stewart: Director, Aboriginal Land and Waters

Note: Copies of submissions and public briefing transcripts are available at:
<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>

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Explanatory Statement, *Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025 (Serial 23)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/23-2025>

Hon Joshua Burgoyne MLA, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 6 – 27 March 2025*, <https://territorystories.nt.gov.au/10070/992990>

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Dissenting Report – Mr Chanston Paech MLA

Secretariat
Legislative Scrutiny Committee
Northern Territory Legislative Assembly
Darwin, NT 0800



CHANSEY PAECH MLA

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Dear Secretariat,

Dissenting Report; Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025


The Legislative Scrutiny Committee was tasked with reviewing the Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025 and examining its proposed applications and consequences of amendment.

The committee received 30 comprehensive submissions from a diverse range of expert stakeholder organisations, community members, and government bodies, reflecting the high level of community interest and concern surrounding this bill.

The bill, introduced by the CLP Government, claims to enhance protections for sacred sites, streamline processes for economic development, and improve the efficiency of the Aboriginal Areas Protection Authority (AAPA). However, as highlighted in numerous submissions, these justifications are debatable and warrant a more thorough examination. Submissions reflected a broad spectrum of views, from support to strong recommendations for the rejection of the bill.

Disappointingly, the CLP Government members of the committee did not share the view that a public hearing should be held on this critical legislation. This decision undermines the spirit of transparency and robust consultation expected of the legislature by Territorians, particularly given the significant cultural, land and spiritual implications for Aboriginal Territorians.

Many submissions came from Aboriginal Territorians with a deep cultural and spiritual connection to sacred sites. By denying these individuals the opportunity to present their testimonies verbally, the



committee missed vital insights and perspectives. For many Aboriginal people, English is a second language, and verbal communication is culturally preferred when speaking about matters of cultural and spiritual significance as there are often not words to describe certain considerations.

The Minister, when introducing the bill, emphasised community participation in the consultation process. However, the decision to forego public hearings contradicts this commitment, silencing voices that deserve to be heard on such an important issue.

The proposed legislation falls short in several critical areas:

- **Insufficient Penalties:** The bill fails to increase penalty points for breaches of clearance certificates or update penalty units to deter misconduct effectively.
- **Lack of Remediation Measures:** It does not outline actions for remediation of sacred sites that have been disturbed.
- **Outdated Compliance Framework:** The compliance and enforcement provisions remain outdated, failing to align with modern environmental and heritage protection standards.

Many submissions, particularly from Aboriginal stakeholders, have called for the bill in its current form to be rejected. However, they are supportive of reform of the current Sacred Sites Act. They advocate for this to be done in genuine consultation and co-designed with all stakeholders, so that the cultural and spiritual protections of sacred sites are upheld, while supporting streamlined processes and economic development opportunities.

It is crucial to highlight that many submitters opposing the bill did so based on legitimate concerns regarding its application and the potential for disputes and legal challenges arising from the proposed amendments.

A recurring theme among submissions is that opposition to the bill is not opposition to development. On the contrary, many submitters welcomed economic opportunities that drive growth and create meaningful, lasting jobs. However, they emphasised that such development must occur in genuine consultation with Traditional Owners, particularly when it involves places of cultural and spiritual significance.

Importantly, sacred sites and the stewardship of Traditional Owners are not static. As new generations of leaders emerge, their voices must not be excluded from critical decisions regarding current, existing, and future sacred sites. This important cultural connection underscores the need for a legislative framework that respects the evolving and living traditions of Aboriginal people.

Additionally, significant areas of the Northern Territory remain unassessed due to the sacredness of active cultural activities or because the land has not yet been earmarked for development, meaning clearances have not been required. This highlights the importance of proactive and genuine engagement

with Aboriginal communities to ensure that sacred sites are protected, and their cultural significance is respected, now and into the future.

As the Opposition, we are committed to safeguarding sacred sites and ensuring that any legislative changes are developed in true partnership with Aboriginal Territorians.

The Opposition supports the calls from submitters to halt this bill and engage in a collaborative process to develop comprehensive legislation that:

- Modernises compliance and enforcement measures.
- Strengthens penalties for breaches of sacred site protections.
- Balances cultural preservation with economic development.

This process must protect the cultural and spiritual significance of sacred sites and uphold the rights and voices of Aboriginal Territorians, within the context of shared benefit for all stakeholders.

We thank the Aboriginal Territorians for their ongoing stewardship of country and places of deep cultural and spiritual significance, we also offer thanks and acknowledgement to the organisations and individuals who contributed to the committee process. Their submissions reflect a wealth of knowledge, lived experience, and a shared commitment to protecting sacred sites for future generations.

The CLP Government must recognise the gravity of this issue and work collaboratively with Aboriginal communities to ensure that sacred sites are respected, protected, and preserved in law and practice.

As with the Domestic and Family Violence and Victims Legislation Amendment Bill, it is extremely concerning that the Government is choosing to minimise scrutiny despite its stated commitment to transparency and accountability.

So far, the CLP Government has only sent four pieces of legislation to the Scrutiny Committee. This suggests the re-establishment of the Scrutiny Committee has largely been an exercise in public relations than good governance.

Yours Sincerely,



Chansey Paech MLA
Member for Gwoja

Dissenting Report – Justine Davis MLA



Dear Secretariat,

Dissenting Report; Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025

The Legislative Scrutiny Committee (the committee) was tasked with reviewing the Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025 (the Bill) and examining its proposed applications and potential impacts. The committee received 30 comprehensive submissions from a diverse range of expert stakeholder organisations, community members, and government bodies. These submissions reflect the high level of community interest and concern surrounding this Bill. As noted in the majority committee report. While submissions were generally supportive of the policy intent of the Bill, concerns were raised about several aspects of the proposed amendments as currently drafted.

As a member of the committee, I have carefully examined the Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025, in accordance with the committee's responsibility to inquire into and report on any Bill referred to us by the Assembly. The committee's mandate includes determining whether the Bill should be passed, amended, or rejected, with particular attention to whether it respects the rights and liberties of individuals and upholds the integrity of the institution of Parliament, and, of particular relevance in relation to this Bill determining whether the Bill has sufficient regard to Aboriginal and Torres Strait Islander traditions.

While I agree with the majority of the committee's recommendations, I have significant concerns about both the process and the substance of the Bill. The decision by Country Liberal Party (CLP) Government members of the committee to oppose public hearings on this legislation is deeply troubling. The exclusion of public hearings has prevented



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meaningful consultation with key stakeholders who are directly affected by this proposed legislation, undermining transparency and limiting the opportunity for Aboriginal Territorians to express their views and expertise on a Bill that impacts their cultural, spiritual, and land rights.

This lack of engagement fails to sufficiently consider the rights of Aboriginal people, a critical aspect of our committee's mandate. Further, refusing to hold public hearings undermines the scrutiny committee process as it reduces the information the committee has access to, and as such the committee's understanding of the Bill and capacity to make informed recommendations about the Bill.

Furthermore, while the committee's recommendations in the majority report to amend the proposed changes to the Aboriginal Areas Protection Authority [AAPA] Board appointments and the transfer of certificates are valuable, I do not believe they sufficiently address the concerns raised by stakeholders.

In conclusion, while I support the majority of the committee's recommendations, **I do not believe this Bill should pass in its current form.**

Sacred sites are part of a living, dynamic tradition and are integral to Aboriginal cultural heritage. The proposed amendments fail to address the full scope of the issues and miss an opportunity to improve the regulatory framework meaningfully. Instead, they risk undermining the NT's reputation for having one of the most effective frameworks for protecting sacred sites.

I submit this dissenting report to highlight the critical issues with both the process and the content of the Bill. I believe the Assembly must reconsider this legislation, taking into account the need for further public hearings and a more comprehensive approach to



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ensure the Bill adequately reflects the rights, traditions, and cultural heritage of Aboriginal Territorians.

Only through genuine consultation and a more robust legislative framework can we ensure that this Bill serves the interests of all Territorians, particularly Aboriginal communities whose sacred sites are at the heart of this legislation.

Committee process, times frames, consultation

The majority of submissions the committee received expressed concern regarding the lack of adequate consultation and limited timeframe for commenting on the Bill. As noted by the Central Land Council (CLC):

There has been no genuine consultation about the Bill with the CLC or the people it represents [...] CLC's Executive committee were very clear with the Minister that they did not consent to the Bill nor regard that meeting as adequate consultation. Nor does a one week comment period to the Scrutiny Committee constitute adequate consultation [...] The CLC maintains its first recommendation from its 2015 submission: that no amendments be made to the Act without first obtaining the explicit consent of AAPA Board and the four Territory Land Councils. That has not occurred here.¹

The CLC's addendum further emphasised:

The combined land councils have spoken up for many years about the need to strengthen the Act, including by recognising the sacred sites processes of land councils. Instead the government is fast tracking amendments that please land users and developers without consulting Aboriginal Territorians, despite the

¹ Central Land Council (CLC), Submission No. 26, pp. 5-6; see also Submission Nos: 1, 2, 5, 6, 9, 10, 13, 14, 16, 17, 18, 19, 21, 25, 26, 28, and 29



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MEMBER FOR JOHNSTON
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*enormous significance sacred sites protection has for us. Sacred sites belong to Aboriginal people, not the Government, and the government should not change the law protecting our sites without consulting us. Achieving lasting and successful legislative and policy outcomes in the Territory can't be done by cutting corners at the expense of Aboriginal people"*²

AAPA stated that consultation with custodians is a key principle of the legislative framework.³ Yet, despite assurances that ample time would be given for submissions, the short timeframe—only one week—proved unworkable for many Aboriginal communities, especially those in remote areas who require more time to engage effectively.

I also note that in the public briefings a Government committee member assured Board members of AAPA, some of whom had travelled considerable distances to attend the public briefing, that *'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. They would have plenty of time to voice their concerns'*.⁴

This was on Tuesday 1st April, with submissions due by Friday April 4th. That is, there were **3 days** for people to 'voice their concerns'.

Many stakeholders who did manage to develop and provide submissions in the time frame noted that challenges with language, remoteness, the time required to bring

² Central Land Council (CLC), Submission addendum 17 April 2025 pp 3

³ *'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'* Public hearings 1/4/25

⁴ Government Committee member, Public briefing, 1/4/25



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people together make a one-week time frame to provide a submission unworkable for many of the people that this Bill will directly affect.

Lack of public hearings:

Stakeholders had a reasonable expectation that public hearings would be held, as is standard for Bills referred to the committee. It is extremely concerning that the majority of committee members – all three Government committee members – opposed public hearings for a Bill directly affecting Aboriginal Territorians, their cultures and histories. The non-government members of the committee strongly argued in favour of public hearings to allow stakeholders to voice their concerns and provide the required expertise vital for proper scrutiny of this legislation, and essential to our role in this committee.

It remains unclear why the majority of the committee opposed having public hearings and as a member of the committee I apologise to Aboriginal people, organisations and others who were denied the opportunity to address the committee directly.

General comments:

The committee heard in submissions that Aboriginal people, custodians and their representative bodies support amending the Act in specific ways and according to their advice to maintain protection for sacred sites and increase efficiency. The current Act has not been amended since it commenced operation in 1989

This is a missed opportunity which could achieve the intention of the Bill as outlined in the explanatory statement. In the Public briefing the department referred to the 2016 PWC review, which I note is now 9 years old. This Review made 39 recommendations yet only one of those recommendations has been included in the Bill. There have also been



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significant changes in knowledge since the review, and a more contemporary review, particularly in the context of NT regulatory approvals concerning development, could have aligned better with Government objectives and stakeholder needs.

I now turn to specific clauses.

Sections 7(3A) and 7(3B)

Under this section the Minister will have the power to recommend the appointment and termination of two Ministerially appointed Authority members. This will occur at the **Minister's discretion** and the Minister does not have to provide any reason for the appointment or termination. The committee has made recommendations that there are criteria for appointment, however no criteria for dismissal remains problematic.

As AAPA noted:

The proposed amendments grant the Minister discretionary power to recommend the removal of government-nominated Authority members, without any requirement for cause or justification. This represents a significant shift in governance that threatens the independence of the Authority.

Unlike the carefully structured process for Aboriginal member appointments, where nominations come from the Land Councils and removals must be justified on clear grounds, government-nominated members could now be removed at will. This introduces the potential for political interference.

These amendments create a pathway for governments to exert undue influence over the Authority's decision-making, particularly in cases



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where its responsibilities to protect sacred sites conflict with government development priorities.

The Authority's credibility relies on its ability to operate free from political pressure, and any changes that weaken this independence risk eroding public, industry, and Aboriginal trust in its ability to uphold the protections enshrined in the Sacred Sites Act.⁵

This amendment also raises an issue of inequity amongst board members because situations are specified under which the Administrator must terminate the appointment of a board member, however the reasons under which a Minister must terminate a Ministerially appointed member are not specified. Termination of the Minister's nominated members at the Minister's discretion is inconsistent with the principles of natural justice, introduces inequality between Ministerially appointed board members and the other members of the Authority, and is not transparent or accountable.

RECOMMENDATION 1:

The Bill should include clear criteria for the termination of Ministerially appointed members, ensuring transparency and accountability.

Clause 7 24A and 24B

24A

I support the committee's recommendations on the transfer of certificates; however, based on the submissions received, these recommendations do not fully address the concerns raised.

The CLC noted that under the Bill, Certificates can be transferred:

⁵ Aboriginal Areas Protection Authority (AAPA), Submission No. 28, pp. 8-9



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JUSTINE DAVIS MEMBER FOR JOHNSTON

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*[...] in respect of the same land and work **or use of land** that were the subject of the existing Certificate” (see proposed section 24A(4)(a)). The words “or use of land” introduce vagary that means the scope of work permitted under a transferred Certificate could be vastly different from what traditional owners were consulted about. For example, the original Certificate may have been granted for the purpose of mining by a small scale or artisanal operator doing little more than prospecting on land. Under the current drafting of the Bill, such a Certificate could be transferred to an international mining company for an open cut mine and tailings dump. The “use of land” for mining would be the same, but the impact on sacred sites and country would be very different. The nature and content of consultations, and the conditions imposed by traditional owners, would be significantly different in both scenarios. Traditional owners giving informed consent to the former scenario, and formulating conditions appropriate to it, does not mean that they have also given informed consent to the latter or that the conditions on the original Certificate would be appropriate.⁶*

The implications of transferring an Authority Certificate from one proponent to another, or adding additional people to the Certificate, without consultation were addressed in many submissions. Several examples were presented which demonstrate that these amendments should not merely be viewed as administrative, and that AAPA needs to have discretion over the transfer of the identify of the holder of the certificates.

- *These amendments remove the ability of AAPA to assess whether a transferee is a fit and proper entity to hold the certificate. A certificate issued to one entity may not be appropriate for another. This increases the potential disputation and legal risks associated with a party who, for example, has a conflict of interest, is in a legal dispute with custodians, a*

⁶ Central Land Council (CLC), Submission addendum 17 April 2025 pp 2



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poor compliance history, or history of inappropriate behaviour towards custodians.⁷

The NLC identified the following potential risks that the Authority should be assessing : Whether the entity:

- *has previously contravened sacred sites legislation or not complied with an enforceable undertaking in the NT or elsewhere*
- *is insolvent or otherwise unable to undertake the works the subject of the certificate for financial or other reasons*
- *has previously been convicted of an offence under sections 33-35 of the Act or section 69 of the Land Rights Act, and it is likely they may offend again*
- *has a history of poor dealings with the custodians of the sites the subject of the Authority Certificate.⁸*

Many submissions emphasised the need for consultation about **any change** to the Authority Certificate,

*'It is not just about how the land is used, but also by whom; that the holders of an Authority Certificate are aligned in values and priorities and can be trusted to honour the Authority with care and integrity.'*⁹

*'The Bill allows Authority Certificates (permits for land use) to be transferred without consulting Aboriginal custodians. **Sacred sites aren't just paperwork** – they're part of living culture. Excluding Traditional Owners from these decisions is unfair and disrespectful.'*¹⁰

⁷ AAPA, Submission No. 28, pp. 9-10

⁸ The last three dot points are from the Northern Land Council, Submission 25, page 8.

⁹ Sujay Kentlyn, Submission 5, page 2

¹⁰ Namultja Aboriginal Corporation., Submission 6, page 1



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It is both prudent and efficient that the authority retains discretion over transfers of licenses. As noted in the Authority’s submission, in the majority of cases, the transfer of an Authority Certificate would be ‘completely uncontroversial’, however there ‘will be some instances where certificates, for a variety of reasons, may not be fit for the purpose of transfer.’¹¹

In situations where the license is to be transferred, as outlined above, it is important for the Authority to retain discretion.

Recommendation 2:
That the Authority **MAY**, not **MUST**, transfer the Authority certificate from one proponent to another

Clause 9 Enforceable Undertakings

A number of submissions supported the inclusion of enforceable undertakings, but there were significant concerns raised with the provisions as currently drafted. Concerns were raised about the consultation process for custodians, the scope of the scheme, and AAPA's ability to administer it.

Consultation

Several submissions argued for the need to explicitly include the requirement for consultation.¹²

[...an enforceable undertaking must] include consultation with custodians where relevant, consistent with section 42. Under 39B (2), an enforceable undertaking

¹¹ AAPA, Public briefing, April 1st 2025
¹² For example, submissions 14, 25, 26



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*may include carrying out remediation work to rectify damage. It is essential that any plan to undertake remediation work is developed in collaboration with custodians, and that custodians are present when that work is undertaken.*¹³

And

*It is critical that the views and wishes of traditional owners are the primary consideration for the Authority's decision about whether to accept an undertaking. Insertion of that as the primary mandatory consideration would reflect the commitment given by Minister Burgoyne to Council on 10 April 2025 that traditional owners would be the ones who decide if a company would be allowed to give an enforceable undertaking.*¹⁴

Scope of the Bill

It was argued that the drafting of the Bill is unable to contend with serious breaches where sacred sites are desecrated or harmed, and that this undermines the deterrent effect of criminal and civil penalties.¹⁵

Due to the seriousness of the harm involved, the NLC does not consider an enforceable undertaking is an appropriate remedy for desecration of a site under s 35 of the Act. The following factors necessitate the inappropriateness of an enforceable undertaking to address this type of offending: not considered appropriate or suitable for contravention of s 35 of the Act regarding desecration which carries a maximum of 2 years imprisonment and the fact that by 39C (5) the giving of an enforceable undertaking does not constitute an admission of guilt by the undertaker.

¹³ Gudanji Yanyuwa Garra Marra Aboriginal Corporation Board submission 14 p 3

¹⁴ Central Land Council (CLC), Submission addendum 17 April 2025 pp 2

¹⁵ Submissions 2, 5, 6, 13, 25



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Investigative and compliance capacity afforded to AAPA under the Bill

The amendments do not provide AAPA with the necessary investigative and compliance powers to properly administer the new scheme in an effective way. AAPA notes:

The Authority has no explicit power to compel information, conduct site inspections, or verify compliance with an undertaking. This creates a significant enforcement gap and reduces accountability for non-compliance. These powers have been the subject of previous recommendations to amend the Sacred Sites Act, but are not included in the current Bill.¹⁶

During the public briefing Department of the Chief Minister and Cabinet representatives (The Department) said that they were “...[progressing] regulations to enable AAPA to issue infringement notices as an additional regulatory tool and a complementary tool for the enforceable undertakings” however the details and time frames for this reform remains unclear. The committee has recommended that consideration be given to this, and I strongly support this recommendation.

Recommendations 3, 4, and 5:

- 3) Consultation must take place with custodians before an enforceable undertaking takes place
- 4) Contraventions of s 35 should be removed from the ambit of the Enforceable Undertaking regime.
- 5) AAPA should be properly resourced and afforded powers to investigate and enforce compliance.

¹⁶ AAPA, Submission No. 28, p. 11





Conclusion

I am deeply grateful to Aboriginal Territorians for their ongoing care for country and custodianship of sacred places. I also thank all those who contributed to the Scrutiny Committee process for sharing your wisdom and ideas and I once again express my regret that we did not offer an opportunity to learn more from you in order to strengthen this Bill for the benefit of all Territorians.

I also extend my thanks to the committee secretariat for their assistance throughout this process.

Justine Davis
Independent Member for Johnston