

# Explanatory Statement

## NORTHERN TERRITORY ABORIGINAL SACRED SITES LEGISLATION AMENDMENT BILL 2025

### SERIAL NO. 23 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LANDS, PLANNING AND ENVIRONMENT

#### GENERAL OUTLINE

This Bill amends the *Northern Territory Aboriginal Sacred Sites Act 1989* and the *Northern Territory Aboriginal Sacred Sites Regulation 2004* to ensure the Act and the Regulation 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.

#### NOTES ON CLAUSES

##### **Part 1 Preliminary matters**

##### **Clause 1. Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025*.

##### **Clause 2. Commencement**

This clause sets out how the amendment Act will be commenced. This will be on the day on which the Administrator's assent to this Act is declared.

##### **Part 2 Amendment of Northern Territory Aboriginal Sacred Sites Act 1989**

##### **Clause 3. Act amended**

This is a formal clause which provides that Part 2 amends the *Northern Territory Aboriginal Sacred Sites Act 1989* (the Act).

##### **Clause 4. Section 3 amended (Definitions)**

This clause updates definitions of terms of the Act. It is proposed to insert the definitions of ***enforceable undertaking*** and ***recorded party***.

An ***enforceable undertaking*** will be defined by new section 39B(1).

A ***recorded party*** for an Authority Certificate, will mean a person who is specified in the Certificate as a recorded party for the Certificate.

This clause also inserts a note clarifying that the *Interpretation Act 1978* contains definitions and other provisions that may be relevant to this Act.

#### **Clause 5. Section 6 amended (Composition of Authority)**

This clause generally modernises the language in section 6. Further, it clarifies the composition of the Authority by categorising its members into two groups: Aboriginal members nominated by the Land Councils and members nominated by the Minister.

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.

#### **Clause 6. Section 7 amended (Resignation and termination of membership)**

This clause relates to termination of members. It generally modernises the language in section 7.

The revised section 7(3) allows the Administrator to terminate the appointment of an Aboriginal member on limited grounds of incompetence or misbehaviour.

Additionally, this clause inserts sections 7(3A) and 7(3B) to allow the Minister at his or her discretion recommend in writing to the Administrator for the termination of the appointment of a member who was appointed on the Minister's nomination under section 6(2A). These provisions allow for broader removal powers which reflect that such persons are the Minister's own nominees.

Once the Minister makes this recommendation, the Administrator may remove the member from their position. 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 responsive to evolving policy and community needs.

#### **Clause 7. Section 24A and 24B inserted**

This clause inserts section 24A to establish a mechanism for transferring an Authority Certificate to increase process efficiencies when prior consultations have already undertaken in respect of the same area of land and work or use of the land where an Authority Certificate has previously been issued. A person (the transferee) with the consent of the holder of an existing Authority Certificate may apply to the Authority for the existing Authority Certificate to be transferred to the transferee.

These transfers are administrative in nature only. Previous considerations undertaken by the Authority or the Minister prior to the issuance of the existing Authority Certificates would have considered wishes of Aboriginal people relating to the extent to which the sacred site should be protected for the same work and use of the land and taken them into account as required by section 42 of the Act. With these transfers there will be no changes to the original protections, limitations or controls put on the land to protect the sacred site.

Noting the Territory is a creation of the Commonwealth Parliament, the Commonwealth *Aboriginal Land Rights Act (Northern Territory) 1976* operates to require that laws concerning sacred sites in the Northern Territory, relevantly must provide a mechanism which by the wishes of Aboriginal people (properly interpreted as the relevant custodians) are taken into account in determining the extent to which those sites are protected. This new provision is consistent with the requirements of the *Aboriginal Land Rights Act (Northern Territory) 1976* as it does not seek to change any of the protections initially imposed which would have considered the wishes of the relevant custodians

regarding the extent to which sacred sites are protected in respect of the same work and use. Any conditions that were imposed at the time will carry over to the new party to which an Authority Certificate is subsequently transferred, ensuring the continuing protection.

The application must be in the form approved by the Authority and include the required fee. After receiving the application, the Authority must issue a new Authority Certificate to the transferee.

The new Authority Certificate must cover the same land and work or use of the land as the existing Authority Certificate and have the same conditions. When the new Authority Certificate is issued, the existing Authority Certificate is automatically cancelled.

This clause also inserts section 24B to clarify 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. The application must be in the form approved by the Authority and include the required fee.

After receiving the application, the Authority must issue a new Authority Certificate to the applicant that includes the added recorded parties. The new Authority Certificate must cover the same land and work or use of the land as the existing Authority Certificate and have the same conditions. This includes importantly any conditions that were originally imposed taking into account the wishes of the relevant custodians about the extent to which the sites be protected. These conditions which provide protections to sacred sites will continue to apply to successive recorded parties.

When the new Authority Certificate is issued, the existing Authority Certificate is automatically cancelled but protections are provided from prosecution for conduct that may have occurred under the previous certificate.

This clause reduces regulatory burden and red tape in long-term projects involving multiple parties by eliminating the need for each new party to apply for a separate Authority Certificate for the same work and land, ensuring continuity and efficiency.

#### **Clause 8. Section 25 amended (Effect of Certificate)**

This clause updates section 25 as a consequential amendment of the new section 24B so that both the holder of the Authority Certificate and the recorded parties can use or work on the land in accordance with the Authority Certificate.

#### **Clause 9. Part IVA inserted**

This clause inserts the new Part IVA to include new sections 39B to 39H. The provisions are modelled on Part VA, Division 2 of the *Petroleum Act 1984*.

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.

New section 39B(1) establishes an enforceable undertaking as an enforceable promise, given by a person in relation to an alleged contravention of this Act or a term or condition of an Authority Certificate.

New section 39B(2) identifies that an undertaking may contain any terms and conditions the Authority considers necessary to ensure compliance with this Act or with an Authority Certificate, and a requirement that the person giving the undertaking publish notice of the alleged contravention and any act or thing done, or to be done, by the person.

New section 39B(3) requires the undertaking to include time limits for the performance of any obligations and a method to monitor compliance with the undertaking.

New section 39B(4) clarifies that negotiations about the undertaking do not affect or compromise the legal rights, claims, or positions of any party involved. Generally speaking, if negotiations fail, neither party can use what was said or agreed upon during the discussions against the other in any future legal proceedings.

Subsection 39(C)(2) requires the Authority to consider various matters before accepting an undertaking, including the nature and gravity of the conduct, the maximum penalty for the alleged contravention, the benefits of the proposed undertaking and the public interest and the interests of justice.

New section 39(C)(3) provides that undertakings must be in writing, signed and dated by the Authority and the person giving the undertaking.

In the interests of transparency, new section 39(C)(4) requires the Authority to publish notice of the decision to accept the undertaking and the reasons for that decision.

The new section 39D enables the Authority to apply to the Supreme Court to enforce the undertaking if the person is not complying with it.

New section 39D(2) identifies that the court may make a range of orders associated with the undertaking, including payment of costs incurred by the Authority in taking action to minimise any harm or other impact resulting from the contravention and compensation to a person who has suffered loss or damage as a consequence of the contravention. The Court may also revoke the undertaking.

New section 39E allows the Authority to take any action if the person in respect of whom the order was made does not comply with the order. The Authority can do what the enforcement order required, take any necessary steps to carry out the order or publicly announce that the person has not followed the order. The section also gives the Authority the power to recover the costs of taking the action through the court.

New section 39F provides that, with the consent of the Authority, the person who has made an enforceable undertaking may withdraw or vary the undertaking, but only in relation to the contravention to which the undertaking relates.

The effect of withdrawing the undertaking is that the undertaking is cancelled. In the interests of transparency, section 39F(4) provides that if the Authority consents to a variation or withdrawal of an undertaking the Authority must publish notice of the decision to consent and the reasons for that decision.

New section 39G(1) specifies that criminal proceedings cannot be commenced or continued against a person who has given an undertaking in relation to the contravention while the undertaking is in place, or after it has been completely discharged. This provides an incentive for a person in relation to an alleged contravention to enter into an undertaking and to comply with its requirements.

New section 39G(2) requires the Authority to take reasonable steps to have a prosecution stayed as soon as possible after accepting an undertaking from a person. New section 39G(3) allows proceedings to be instituted or resumed against a person who gave an undertaking in respect of the alleged contravention if the undertaking is not complied with.

New section 39H provides that if the Authority determines that a person has fully complied with an enforceable undertaking related to an alleged contravention, the Authority must take reasonable steps to discontinue a prosecution if it has already started against that person and no new criminal proceedings can be commenced for the offence that was the subject of the alleged contravention against that person.

#### **Clause 10. Part VII inserted**

This clause inserts the new Part VII covering the new section 55 regarding transitional provisions to ensure a smooth transition when the *Northern Territory Aboriginal Sacred Sites Amendment Act 2025* comes into effect.

The new section 55(1) clarifies that a person who already held office as a member of the Authority before the amendments take effect will remain in their positions after the amendments commence.

The new section 55(2) clarifies that any existing member who is not an Aboriginal member will now be considered a member appointed on the nomination of the Minister under the new section 6(2A). This updates their classification without requiring a new appointment.

The new section 55(3) clarifies that section 7 apply to existing members after the amendments take effect. The new sections 24A and 24B apply to Authority Certificates that were already in place before the amendments. This ensures certificates remain valid and subject to the updated provisions.

The new section 55(4) provides definition for the terms ***amending Act*** and ***commencement***.

### **Part 3 Amendment of Northern Territory Aboriginal Sacred Sites Regulation 2004**

#### **Clause 11. Regulations amended**

This is a formal clause which provides that Part 3 amends the *Northern Territory Aboriginal Sacred Sites Regulation 2004* (the Regulation).

#### **Clause 12. Schedule 4 amended**

This clause amends Schedule 4 of the Regulation by inserting clauses 1A and 1B to allow the Authority to charge fees for the application to transfer Authority Certificate and the application to add a recorded party or parties to Authority Certificate.

### **Part 4 Repeal**

#### **Clause 13. Repeal of Act**

This is a standard clause that provides that this Act will be repealed on the day after it commences.