



1 April 2025

Ms Julia Knight,
Legislative Scrutiny Committee Secretary,
GPO Box 3721
Darwin, NT 0801

**Re: Northern Territory Aboriginal Sacred Sites
Legislation Amendment Bill 2025**

Dear Ms Knight and Committee Members,

Thank you for inviting submissions addressing the terms of reference for the Legislative Scrutiny Committee on the Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025.

I am an independent consultant archaeologist, based in Darwin, Northern Territory. I have worked on the management of the NT's cultural heritage since 2002, including the management of places, objects and documentary records across museums, archives and the NT landscape. Since 2010, I have run an independent heritage management consultancy, In Depth Archaeology, advising clients across the public and private sectors on appropriate management of Indigenous and non-Indigenous places and objects. I was a member of the Northern Territory Heritage Council from 2017 to 2020.

I have reviewed the Legislative Scrutiny Committee's Terms of Reference (TOR), the bill, and the relevant explanatory material, and attended the first half of the public hearing online (1 April 2025). My submission will be limited to certain parts of the TOR, as follows:

“(3)(b)(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:

[...]

(B) is consistent with the principles of natural justice; and

[...]

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively; 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.”

Whether the Assembly should pass the bill:

1. My position is that the Assembly should not pass the bill, for the reasons I've laid out in paragraphs 11-29 below.

Whether the Assembly should amend the bill:

2. Should the Assembly instead decide to pass the bill, my position is that it should be amended to reflect the following.
3. The definition of enforceable undertaking should be amended to read: **“Enforceable undertaking** means an undertaking issued under section 39B(1).”
4. All references to Recorded Parties should be removed.
5. All references to Ministerial nomination of members, and their at-will termination, should be removed.
6. Section 24A – Transfer of Certificate should be amended to mandate consultation with Custodians, and to give the Authority the right to assess an application to transfer based on the full extent of relevant information, including the options to reject an application to transfer or to vary an existing Certificate.
7. Part IV A – Enforceable Undertakings should be amended to include appropriate provision for compliance and enforcement.
8. Specifically, section 39G(3) should be amended as follows: After “if the undertaking is” insert “withdrawn or is”.

9. Following extensive consultation with the Authority and stakeholders, the bill should be expanded to more thoroughly modernise the Act to account for the complexity of the current operating environment. It should consider:
- a. how the currently proposed amendments would potentially have a detrimental effect on the efficiency of developing future Certificates;
 - b. whether current penalties are appropriate;
 - c. the evidence basis for areas of potential efficiency measures.
10. It should include provision for Custodians and Traditional Owners to request a review of decisions.

Whether the bill has sufficient regard to the rights and liberties of individuals:

11. In my view, the bill is inconsistent with the principles of natural justice. It adversely affects the rights of Aboriginal people. It retrospectively imposes unreasonable obligations on the Authority and on Custodians. It is also ambiguous, contradictory and unclear in parts.

(B) Whether the bill is consistent with the principles of natural justice:

12. The bill, in its current form, denies natural justice to Custodians by denying them the opportunity to be consulted on the protection of sacred sites, for the proposed transfer of Existing Certificates and for the addition of Recorded Parties.
13. The bill also denies natural justice to Ministerial appointees to the Authority, as they may be removed from their position 'at any time and at the Minister's discretion.' This introduces inequality between them and the other members of the Authority.

(G) Whether the bill does not adversely affect rights and liberties, or impose obligations, retrospectively:

14. Under Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures. The bill's amendments regarding transfer of Certificates and the addition of Recorded Parties, without consultation, adversely

affects the rights of Custodians to protect their sacred sites appropriately.

15. By extension, given that amendment 55(3) ensures that the transfer and recorded parties amendments apply retrospectively, the bill also retrospectively imposes the obligation on the Authority and on Custodians – some of whom may no longer be with us – to have foreseen every possible eventuality that may occur with relation to development in the vicinity of their sacred sites. This unreasonably, and without recourse, denies any appropriate updates to Existing Certificates, and adversely affects the rights of Custodians.

(J) Whether the bill has sufficient regard to Aboriginal and Torres Strait Islander tradition:

16. Aboriginal and Torres Strait Islander cultures place a high priority on preservation of culture, and on respect for culture. Sacred sites are some of the most significant expressions of Aboriginal and Torres Strait Islander tradition.
17. Additionally, the parent legislation of the *Northern Territory Aboriginal Sacred Sites Act 1989* (“the Act”) – the Commonwealth’s *Aboriginal Land Rights (Northern Territory) Act 1976* – encodes the rights of Aboriginal people to be consulted regarding the protection of sacred sites.
18. The current bill, by negating the requirement to consult Custodians in specific circumstances, pays insufficient regard to Aboriginal and Torres Strait Islander tradition.

(K) Whether the bill is unambiguous and drafted in a sufficiently clear and precise way:

19. The proposed amendments regarding transfer of Authority Certificates, and the addition of Recorded Parties, both appear to be in direct conflict with Section 42 of the Act, which mandates consultation with Aboriginal people.
20. I have strong concerns about the wording of these amendments, stating that the Authority “must” issue a new Certificate, and “must” specify recorded parties. The strictly proscriptive nature of this wording does not allow sufficient flexibility to respond to the complexity of the context in which past Certificates were issued, and in which current

Certificates are in force. In some cases, there may be genuine and valid reasons why an existing Certificate would require amendment prior to transfer, and these reasons can only be fully explored in consultation with Custodians.

21. Examples I have encountered in my professional practice, when subsequent Certificates have been issued for specific sacred sites that required updated information, include the following:

- a. An Existing Certificate included provision in the Restricted Works Area (RWA) conditions for archaeological salvage excavation. At the time of issue, the Custodians held specific views about how the excavated cultural materials should be handled, especially with regard to long term storage and curation.

The archaeological salvage works did not go ahead before a new Certificate was sought, to cover expanded works. By the time the new Certificate was sought, the Custodians who were consulted for the Existing Certificate were no longer alive. Best practice in cultural heritage management had also been updated to improve methods of long term storage and curation of cultural materials.

On Consultation for the new Certificate, the current Custodians held views that differed from their predecessors about how the excavated cultural materials should be handled.

- b. A new Certificate was sought for land that had previously been the subject of an Existing Certificate approximately two decades prior, by the same proponent. The Existing Certificate included RWAs that covered quite broad areas on the map, defined by boundaries associated with lines of latitude and longitude of a mapping coordinate system from the 1960s (no longer in use), rather than on the cultural boundaries of the sites.

Consultation for the new Certificate gave Custodians the opportunity to provide information on the culturally accurate boundaries of the sacred sites, as well as updated information on appropriate conditions for their protection. The outcome was a greatly reduced footprint of 'no go zones,' greater clarity for the proponent on specifically allowed and disallowed activities,

and – as a byproduct of the process – a strengthened relationship between the proponent and the Custodians.

22. These examples reflect just some of the important reasons why Existing Certificates should not be transferred without consultation with current Custodians. It is in the interests of both Custodians and proponents for Certificates to contain the most up to date information possible.
23. The purpose and role of Recorded Parties is not specified in the bill. I object in the strongest possible terms to the insertion of specified persons, or classes of person, without an explicit purpose or defined role – and whom the Authority “must” add to the Certificate at the request of the holder of the Certificate, without any discretion or review.
24. The proposed amendments regarding enforceable undertakings do not make sufficient additional provision for compliance and enforcement powers. It is unclear how such amendments could be implemented by the Authority.

Other related matters:

In addition to the foregoing, I make the following observations on related matters.

25. I note that the Explanatory Statement says when a 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. I could find no such protections in the bill.
26. I am concerned that the clause allowing at-will termination of Ministerial appointees has the potential to influence their independence from Government, and consequently may compromise the integrity of this independent statutory authority.
27. I support the introduction of enforceable undertakings as an alternative to civil or criminal prosecution. It provides 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 industries on compliance, in addition to restitution and, where possible, restoration.

28. Establishing best practice in cultural heritage management, especially in the management of sacred sites, has many positive flow-on effects. These include:

- a. A streamlined framework across state and federal agencies for the effective preservation and safeguarding of our heritage estate for future generations;
- b. Ensuring cultural heritage management also delivers on the economic and social aspirations of Aboriginal people, and puts control of their heritage into their hands;
- c. Providing effective regulation and certainty to industry, and developing meaningful partnerships between industry and Aboriginal people to meet common goals; and
- d. Balancing the preservation and promotion of our heritage estate to increase the richness of the visitor experience in the tourism market.

29. Economic benefits are not the only measure of societal wealth. We should not sacrifice or compromise the heritage of millennia of Indigenous cultural life in the Territory for the short-term gain of economic boost.

Thank you for considering my submission. I look forward to learning the outcomes of your inquiry.

Best regards,



Karek (KC) Martin-Stone,
Principal Archaeologist

