

Serial 23

Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025
Mr Burgoyne

A Bill for an Act to amend the *Northern Territory Aboriginal Sacred Sites Act 1989* and the *Northern Territory Aboriginal Sacred Sites Regulations 2004*

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY ABORIGINAL SACRED SITES LEGISLATION AMENDMENT ACT 2025

Act No. [] of 2025

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2025

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An Act to amend the *Northern Territory Aboriginal Sacred Sites Act 1989* and the *Northern Territory Aboriginal Sacred Sites Regulations 2004*

[Assented to [] 2025]
[Introduced [] 2025]

10 **The Legislative Assembly of the Northern Territory enacts as follows:**

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025*.

15

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Northern Territory Aboriginal Sacred Sites Act 1989

20

3 Act amended

This Part amends the *Northern Territory Aboriginal Sacred Sites Act 1989*.

4 Section 3 amended (Definitions)

(1) Section 3

omit

Act, unless the contrary intention appears:

5 *insert*

Act:

(2) Section 3

insert

enforceable undertaking, see section 39B(1).

10 ***recorded party***, for an Authority Certificate, means a person who is specified in the Certificate as a recorded party for the Certificate.

(3) Section 3, at the end

insert

Note for section 3

15 *The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

5 Section 6 amended (Composition of Authority)

(1) Section 6(1)

omit

20 shall consist

insert

consists

(2) Section 6(2)

omit

25 shall

insert

are to

(3) After section 6(2)

insert

(2A) Two members of the Authority are to be persons appointed on the nomination of the Minister.

5 (4) Section 6(3)

omit

all words from "shall" to "Authority an"

insert

10 must, on the nomination of the members of the Authority, appoint an

(5) Section 6(5)

omit

all words from "shall," to "writing"

insert

15 must, when the occasion for the appointment of the Aboriginal members arises, by written notice

6 Section 7 amended (Resignation and termination of membership)

(1) Section 7(3)

20 *omit*

remove a member from office for

insert

terminate the appointment of an Aboriginal member on the grounds of

25 (2) After section 7(3)

insert

30 (3A) The Minister may, at any time and at the Minister's discretion, make a written recommendation to the Administrator for the termination of the appointment of a member who was appointed on the Minister's nomination under section 6(2A).

- (3B) On the Minister's recommendation under subsection (3A), the Administrator may terminate the appointment of the member nominated by the Minister.

(3) Section 7(4)

5

omit

all words from "shall" to "office"

insert

must terminate the appointment of a member

7 Sections 24A and 24B inserted

10

After section 24

insert

24A Transfer of Certificate

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- (1) A person (the **transferee**) may, with the consent of the person to whom an Authority Certificate (the **existing Certificate**) was issued, apply to the Authority for the existing Certificate to be transferred to the transferee.

- (2) The application must be:

- (a) in a form approved by the Authority; and
- (b) accompanied by the prescribed fee.

20

- (3) After receiving the application, the Authority must issue a new Authority Certificate to the transferee.

- (4) The new Authority Certificate must be issued:

- (a) in respect of the same land and work or use of the land that were the subject of the existing Certificate; and

25

- (b) subject to the same conditions to which the existing Certificate was subject.

- (5) On the issue of the new Authority Certificate, the existing Certificate is automatically cancelled.

24B Recorded parties for Certificate

(1) Any of the following may be specified in an Authority Certificate as a recorded party, or as recorded parties, for the Certificate:

(a) a specified person;

5 (b) persons of a specified class, including persons who, from time to time, carry out work or make use of the land that is the subject of the Certificate.

10 (2) A person to whom an Authority Certificate (the **existing Certificate**) was issued may apply to the Authority for one or more persons specified in the application to be added to the Certificate as a recorded party, or as recorded parties, for the Certificate.

(3) The application must be:

(a) in a form approved by the Authority; and

(b) accompanied by the prescribed fee.

15 (4) After receiving the application, the Authority must issue a new Authority Certificate to the applicant in place of the existing Certificate.

(5) The new Authority Certificate must:

20 (a) specify as a recorded party, or as recorded parties, for the Certificate the person or persons who were specified in the application; and

(b) be issued:

(i) in respect of the same land and work or use of the land that were the subject of the existing Certificate; and

25 (ii) subject to the same conditions to which the existing Certificate was subject.

(6) On the issue of the new Authority Certificate, the existing Certificate is automatically cancelled.

8 Section 25 amended (Effect of Certificate)

(1) Section 25

omit

the Certificate, a person

5

insert

an Authority Certificate, a person to whom the Certificate was issued or a person who is a recorded party for the Certificate

(2) Section 25(a)

omit

10

an Authority

insert

the

9 Part IVA inserted

After section 39A

15

insert

Part IVA Enforceable undertakings

39B Enforceable undertakings

20

(1) An ***enforceable undertaking*** is an enforceable promise given under this Part by a person in relation to an alleged contravention of this Act or a term or condition of an Authority Certificate.

(2) An enforceable undertaking may contain any of the following:

(a) any terms and conditions that the Authority considers necessary to ensure compliance with this Act or with an Authority Certificate;

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(b) a requirement that the person who gives the undertaking carries out specified remediation work to rectify damage resulting from an action that is allegedly in contravention of this Act or an Authority Certificate;

(c) a requirement that the person who gives the undertaking publishes notice of the alleged contravention and any act or thing done, or to be done, by the person.

5

(3) An enforceable undertaking must include time limits for the performance of any obligations and a method to monitor compliance with the undertaking.

(4) The process of negotiating an enforceable undertaking is without prejudice to any party's position.

39C Authority may accept enforceable undertaking

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(1) The Authority may accept an enforceable undertaking given by a person in connection with an alleged contravention of:

(a) this Act; or

(b) a term or condition of an Authority Certificate.

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(2) The Authority must consider the following before accepting the enforceable undertaking:

(a) the nature and gravity of the conduct constituting the alleged contravention;

(b) if applicable – the maximum penalty provided for the alleged contravention;

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(c) the benefits of the proposed undertaking and the public interest;

(d) the interests of justice;

(e) any other factor that the Authority considers relevant.

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(3) The enforceable undertaking must be in writing, signed by the Authority and the person who gives the undertaking and dated.

(4) The Authority must publish on the Authority's website, or in any other way determined to be appropriate by the Authority, notice of the decision to accept the enforceable undertaking and of the reasons for that decision.

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(5) The giving of the enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the alleged contravention.

39D Enforcement orders

(1) The Authority may apply to the Supreme Court for an order under subsection (2) if the Authority considers that a person has contravened an enforceable undertaking accepted by the Authority.

5 (2) The Supreme Court may make any of the following enforcement orders if the Court is satisfied that the person has contravened the enforceable undertaking:

(a) an order directing the person to comply with the undertaking;

10 (b) an order directing the person to do any specified act or thing for the purpose of complying with the undertaking;

(c) an order directing the person to do any specified act or thing to minimise any harm or other impact resulting from the contravention of the undertaking;

15 (d) an order that the person pay an amount to the Authority for any costs or expenses reasonably incurred by the Authority in taking action to minimise any harm or other impact resulting from the contravention of the undertaking, including any investigation, legal or court costs;

20 (e) an order that the person pay an amount in compensation to any other person who has suffered loss or damage as a result of the contravention of the undertaking;

(f) an order revoking the undertaking;

(g) any other order the Court considers appropriate in the circumstances.

25 **39E Power of Authority to take action**

(1) If the Supreme Court makes an enforcement order under section 39D(2) and the person in respect of whom it was made contravenes the order, the Authority may:

(a) do any act or thing specified in the order; or

30 (b) do anything that is necessary or expedient to be done for the purpose of doing an act or thing specified in the order; or

(c) publish notice that the person has contravened the order.

- 5 (2) The Authority may recover the reasonable costs and expenses incurred in doing a specified act or thing under subsection (1) from the person in respect of whom the enforcement order was made in a court of competent jurisdiction as a debt due and payable to the Territory.

39F Variation or withdrawal of enforceable undertaking by interest holder

- 10 (1) A person who has given an enforceable undertaking to the Authority may vary or withdraw the undertaking with the consent of the Authority.
- (2) Despite subsection (1), the provisions of an enforceable undertaking cannot be varied to provide for a different alleged contravention.
- 15 (3) An enforceable undertaking is revoked on the withdrawal of the undertaking.
- (4) The Authority must publish on the Authority's website, or in any other way determined to be appropriate by the Authority, notice of the decision to consent to the variation or withdrawal of an enforceable undertaking and of the reasons for that decision.

20 **39G No criminal proceedings while enforceable undertaking in force**

- 25 (1) Subject to subsection (3), no proceedings for an alleged contravention of this Act may be commenced or continued against a person who has given an enforceable undertaking in relation to the contravention while the undertaking is in force.
- (2) After accepting an enforceable undertaking from a person in relation to an alleged contravention of this Act, the Authority must take reasonable steps to have any prosecution against the person in relation to the contravention stayed as soon as possible.
- 30 (3) Proceedings may be instituted or resumed against a person who has given an enforceable undertaking in relation to an alleged contravention of this Act if the undertaking is not complied with.

39H No further proceedings if enforceable undertaking complied with

If the Authority is satisfied that an enforceable undertaking in relation to an alleged contravention of this Act has been complied with:

- (a) the Authority must take reasonable steps to have any prosecution in relation to the contravention discontinued as soon as possible; and
- (b) a criminal proceeding for an offence that is constituted by the alleged contravention may not be commenced.

10 Part VII inserted

After section 54

insert

Part VII Transitional matters for Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025**55 Continuation of appointments and application of amendments**

- (1) Despite the amendments made by the amending Act, a person who held office as a member of the Authority immediately before the commencement (an **existing member**) continues to be a member of the Authority after the commencement.
- (2) For subsection (1), an existing member who is not an Aboriginal member of the Authority is, after the commencement, taken to be a member appointed on the nomination of the Minister under section 6(2A), as in force after the commencement.
- (3) To avoid doubt:
 - (a) section 7, as in force after the commencement, applies in relation to an existing member; and
 - (b) sections 24A and 24B, as in force after the commencement, apply in relation to an Authority Certificate that was in effect immediately before the commencement.
- (4) In this section:

amending Act means the *Northern Territory Aboriginal Sacred Sites Legislation Amendment Act 2025*.

commencement means the commencement of section 3 of the amending Act.

Part 3 Amendment of Northern Territory Aboriginal Sacred Sites Regulations 2004

5 **11 Regulations amended**

This Part amends the *Northern Territory Aboriginal Sacred Sites Regulations 2004*.

12 Schedule 4 amended

Schedule 4, after item 1

10 *insert*

1A	Application for transfer of Authority Certificate	100
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1B	Application to add a recorded party or parties to Authority Certificate	100
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Part 4 Repeal

13 Repeal of Act

This Act is repealed on the day after it commences.