



**Aboriginal Areas
Protection Authority**
protecting sacred sites across the territory

Ref: 202500606

Mr Tom Leeming
Deputy Chief Executive Officer
Policy and Reform
Department of the Chief Minister and Cabinet

Via email: tom.leeming@nt.gov.au

Dear Tom

Territory Coordinator – draft Bill

Thank you for meeting with us in November to discuss the draft Territory Coordinator Bill. We have had the opportunity to review the draft Bill and provide some general comments below.

Significant projects – early engagement

The Authority strives to promote the benefits of early engagement with the processes for the protection of Aboriginal sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (the Sacred Sites Act).

These benefits include: the development of a social licence to operate; responsible engagement with Aboriginal culture and people; establishing relationships; managing risk against the offence provisions of the Sacred Sites Act; compliance with the legislative framework of the Northern Territory and the expectations of the broader Australian community.

For the most part, proponents of significant projects in the Northern Territory are engaged with the processes of the Sacred Sites Act. Significant projects typically have a multi-year project timeframe, and with the benefit of early engagement, the Authority is able to achieve outcomes for proponents that align with project planning.

However, in some cases, proponents have unrealistic expectations about the processes of the Sacred Sites Act, or a lack of awareness of how these processes might intersect with environmental or other approvals. This sometimes trips proponents, who become aware late in their project cycle of their need to obtain an Authority Certificate. This can place undue pressure on the Authority to meet project timeframes within unreasonable time periods.

In these scenarios the Authority can suffer reputational cost by causing delay to approvals. In addition, resources of the Authority may need to be reconfigured to meet urgent timeframes, which in turn causes delay to the completion of other projects.

Darwin
P: +61 (08) 8999 4365
F: +61 (08) 8999 4334
www.aapant.org.au
enquiries.aapa@aapant.org.au
4th Floor, R.C.G Centre
47 Mitchell Street DARWIN NT
GPO Box 1890, DARWIN NT 0801

Alice Springs
P: +61 (08) 8951 5023
F: +61 (08) 8951 7398
www.aapant.org.au
enquiries.aapa@aapant.org.au
1st Floor, NT House
44 Bath Street ALICE SPRINGS NT
All mail to Darwin GPO

Cooperation between the Authority and the Coordinator

The *Northern Territory Aboriginal Sacred Sites Act 1989* (the Sacred Sites Act) is not classed as a Scheduled Act under the draft Bill. This means that certain powers under the Bill cannot be exercised in respect to the Authority's statutory decision-making processes.

The draft Bill also states that the powers of the Territory Coordinator may not be exercised in a manner that would interfere with or modify the protection of sacred sites.

While these elements are important and provide a degree of separation between the roles of the Authority and the Coordinator, there are other parts of the Bill that do intersect with the Authority's functions. Accordingly, it will be important that there is clarity around the intersection of these functions and the manner in which agencies are engaged with one another.

The Authority is supportive of good coordination of projects through the Territory's regulatory frameworks, including the processes under the Sacred Sites Act, and the provision of clear information and guidance to proponents. This requires good communication and cooperation between the Authority, the Office of the Territory Coordinator and other regulatory agencies.

This will ensure that proponents are delivered the best regulatory framework and are afforded appropriate and consistent advice.

Territory Development Areas

The Authority can support the development of Territory Development Areas through the advance procurement of an Authority Certificate that supports development over these areas. Authority Certificates identify the location of Aboriginal sacred sites and set conditions for their protection. Authority Certificates also provide legal indemnity against the offence provisions in the Sacred Sites Act.

An Authority Certificate will be important to ensure that the offence provisions under the Sacred Sites Act are not inadvertently triggered by the Coordinator through, for example, the issue of authorisation to enter land and carry out work within a development area.

I am available to discuss with you the matters raised in this letter, or any other queries. I have also attached a brief summary paper on Aboriginal Sacred Sites and the Sacred Sites Act for your information.

Yours sincerely,



Dr Benedict Scamبارy
Chief Executive Officer

13 January 2025

cc: otc.consultation@nt.gov.au

Aboriginal Sacred Sites

Aboriginal sacred sites are places within the landscape that have a special meaning or significance under Aboriginal tradition. Hills, rocks, waterholes, trees, plains, lakes, billabongs and other natural features can be sacred sites. In coastal and sea areas, sacred sites may include features which lie both above and below the water.

Sacred sites derive their status from their association with particular aspects of Aboriginal social and cultural tradition. This body of tradition is mainly concerned with the activities of ancestral beings, collectively known as 'Dreamings' whose travels across the land and sea created the physical and social world that people now inhabit.

Sacred sites are important for Aboriginal people as key markers of Aboriginal law, beliefs and knowledge systems. They are geographic places and yet they encompass a range of intangible cultural heritage values that exist in memory, in ritual, in spirituality, and narratives that are integral to law and culture and place.

Sacred sites are the responsibility of groups of individuals - custodians who have responsibilities to protect their sites and whose rights and responsibilities are codified through kinship and relationships to land.

Some sacred sites are powerful and dangerous places and may have traditional restrictions associated with gender or seniority. Aboriginal people are concerned to protect all people from contact with these places, as there could be unintended consequences for both those who transgress and also for the Aboriginal people who are custodians of those places.

Aboriginal law dictates that if a sacred site is damaged or infringed upon, the custodians are exposed to retribution and sanctions from their kin. In addition, traditional beliefs are that they may also incur sickness or death as a consequence of offending ancestors whose essence may reside at a sacred site.

The consequences of damage, desecration or interference with sacred sites for local and regional Aboriginal communities is immense, both in terms of sanctions that might apply for the inferred breaches of traditional law and ensuing social rupture.

Protection of Aboriginal Sacred Sites

All Aboriginal sacred sites in the Northern Territory are protected by the Sacred Sites Act, whether or not those sites are known to the Authority.

As a regulator, the Authority is charged with protecting sacred sites in accordance with the Sacred Sites Act, which is designed to

'...effect a practical balance between the recognised 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...'

Protection of sacred sites under the Sacred Sites Act is predominately achieved through the mechanisms of sacred site registration, and the issuing of Authority Certificates (or sacred site clearances) to investors, government agencies, and other users of land, for proposed developments.

Key functions of the Authority are to:

- a) consult with the Aboriginal custodians of sacred sites on or in the vicinity of land where use or works is proposed to ensure that sacred sites are protected;
- b) determine the nature of the constraints (if any) on particular land use proposals; and
- c) issue Authority Certificates, which are approvals for works or use of land on, or in the vicinity of, a sacred site in accordance with the wishes of Aboriginal custodians. Authority certificates provide indemnity against the offence provisions of the Sacred Sites Act.

All significant developments in the Northern Territory require the benefit of an Authority Certificate in order to conduct activity free from risk of damage to sacred sites. Proponents in the mining, oil and gas sectors, and developers of public and private infrastructure require an Authority Certificate as part of their due diligence processes, with receipt of an Authority Certificate often being an essential and early regulatory approval that influences the financing of major developments.