

# REVIEW OF THE FUTURE ACTS REGIME

## Questions in the ALRC's Issues Paper

### Key issues

**Question 1** What are the most important issues to consider for reform in the future acts regime? If you have had negative experiences, we would like to hear about them and what did not work well.

**Question 2** Are there any important issues with how the future acts regime currently operates that we have not identified in the Issues Paper?

**Question 3** Are there any aspects of the future acts regime that work well? If you have had positive experiences, we would like to hear about them and why they were positive.

When responding to Questions 1–3, you may wish to consider the issues summarised here and discussed in further detail in the Issues Paper:

- a. **Resourcing and capacity** constraints are significant barriers to meaningful participation. This can be true for both native title parties and proponents.
- b. While **agreement-making** can have important benefits, its success in reaching an equitable outcome can depend on the parties involved and resources available to them. **Bargaining power** is often uneven and weighted in favour of proponents.
- c. The strength of **procedural rights** does not always align with the potential impact that some categories of future acts may have on native title rights and interests. Additionally, there are few, if any, legal consequences for non-compliance with the requirements of the future acts regime.
- d. The **right to negotiate** applies to only limited future acts and the six-month negotiation window may limit its effectiveness. It can be difficult to satisfy the onus of proof that a party has not negotiated in **good faith**.
- e. The **expedited procedure** is problematic, particularly in how it intersects with state and territory Aboriginal and Torres Strait Islander cultural heritage laws.

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The full Issues Paper is available at the ALRC website: [www.alrc.gov.au/publication/future-acts-issues-paper-2024](http://www.alrc.gov.au/publication/future-acts-issues-paper-2024)



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- f. **Future act determinations** have predominately been in favour of the future act being done.
- g. It is difficult for native title holders to obtain **timely and accessible compensation**.
- h. **Alternative regimes** offer a point of comparison to the future acts regime, but experiences are mixed.
- i. The interaction between the future acts regime and **other legislative regimes** is confusing.
- j. The future acts regime does not appear to achieve its **goals** as stated in the preamble to the *Native Title Act 1993* (Cth).
- k. **Disapplying the Racial Discrimination Act 1975 (Cth)** may not be needed or appropriate for a fair and balanced future acts regime.
- l. The future acts regime is **complex**.
- m. A lack of **data** and its centralised collection makes it difficult to assess how the future acts regime is operating.
- n. The current categories of future acts may not be fit for purpose for **new and emerging industries**.

## Potential reform options

**Question 4** Do you have any ideas for how to reform the future acts regime?

You may wish to consider how the future acts regime could be reformed to:

- a. make it work better, more equally, and more fairly;
- b. make it more efficient to reduce the time and cost of compliance for all parties;
- c. reflect fundamental principles of human rights, such as equality before the law and free, prior, and informed consent;
- d. support fair negotiations and encourage proponents and native title groups to work collaboratively, including options for native title groups, proponents, and governments to share in the benefits of development on native title land; and
- e. strengthen data collection and appropriate data transparency.

**Question 5** What would an ideal future acts regime look like?