

Submission in response to

## Review of the Future Acts Regime

Prepared by

Environmental Justice Australia

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## About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice.

We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment.

EJA has a long history in advocating for the protection of ecosystems, flora and fauna, and has worked closely with people, communities and organisations to do so. We have brought ground-breaking litigation on behalf of brave clients to protect key ecosystems and threatened and endangered species.

On behalf of community groups, we run powerful legal cases and advocacy campaigns to stop the expansion of climate-damaging fossil fuels and remove the barriers to clean, renewable energy. We use the law to accelerate the energy transition, ensuring all people have access to low polluting, low emissions-intensive and affordable energy. We provide legal support for communities impacted most by the transition.

### **Acknowledgement of Country**

We acknowledge the Traditional Owners of the lands on which our team lives and where the EJA office is located and the Traditional Owners of the Country this submission relates to. We pay our respects to Elders past and present and recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded.

We acknowledge the role of the legal system in establishing, entrenching and continuing the oppression and injustice experienced by First Nations people. We also acknowledge that the law has been an avenue for resistance and a critical framework of action for First Nations justice. It is an inherently complex space; we seek to contribute to using and developing laws in ways that lay foundations for just outcomes for First Nations people across the continent.

## Executive summary

1. EJA welcomes the opportunity to provide feedback to the Australian Law Reform Commission on the review of the future acts regime under the *Native Title Act 1993* (Cth) (**Native Title Act**).
2. EJA supports laws and practices that power communities, protect nature, safeguard against climate harms and promote social and environmental justice.
3. EJA makes this limited submission to:
  - a. Provide a case study relating to the interaction of the *Pastoral Land Act 1992* (NT) (**Pastoral Land Act**) and the future acts regime, and
  - b. highlight basic deficiencies in the Pastoral Land Act as it relates to native title holders.
4. We note that EJA does not practice or have expertise in native title law. However, EJA has worked for clients, including the Environment Centre (NT) Inc (**ECNT**) and traditional owners, to scrutinise land clearing in the Northern Territory (**NT**). We consider this experience relevant to the current review of the future acts regime.

## Case study - Auvergne Station litigation

6. In 2023, on behalf of ECNT, EJA commenced judicial review proceedings challenging a decision of the NT Pastoral Land Board to grant a land clearing permit for an alleged non-pastoral purpose at Auvergne Station. The Northern Land Council commenced proceedings in relation to the same decision of the Pastoral Land Board and the two proceedings were subsequently joined.<sup>1</sup>
7. Auvergne Station proposed to clear 924ha of native vegetation, of which approximately 250ha was intended as a trial cotton crop. Our client sought to establish that the pastoral lessee's proposed cotton trial was not a pastoral purpose (as defined in the Pastoral Land Act), and that a non-pastoral use permit was required. This is important in the context of the future acts regime because:
  - a. The Pastoral Land Act states that the grant of a non-pastoral use permit can be a future act to which Part 2, Division 3, Subdivision G of the Native Title Act applies (s87(2A)). The grant of a clearing permit under Part 7A does not contain the same or equivalent provision.
  - b. A non-pastoral use permit application requires notification to native title holders<sup>2</sup>, while an application to clear land for a pastoral purpose does not.

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<sup>1</sup> Jesse Thompson, 'Northern Land Council, Environment Centre NT challenge cotton-growing land clearing permit on NT cattle station', *ABC* (online, 13 February 2023) <<https://www.abc.net.au/news/2023-02-13/two-lawsuits-brought-against-nt-station-cotton-growing-trial/101965274>>.

<sup>2</sup> Department of Environment, Parks and Water Security, 'Pastoral purposes guide', 2021, p5 (online, accessed 21 February 2025) <<https://nt.gov.au/industry/agriculture/farm-management/non-pastoral-use-of-pastoral-land>>.

8. Our client's claim was ultimately not determined. The lessee sought to have the permit revoked before the matter was heard, and as a result ECNT discontinued their proceeding.<sup>3</sup> The lessees subsequently submitted another pastoral land clearing application without reference to cotton, for which a permit has been granted. Since this case, another lessee withdrew an application to clear land which referenced cotton, only to reapply with no reference to cotton.
9. We are aware that concerns remain that cotton cropping is occurring, or will occur, on a commercial scale on pastoral properties in the NT, without non-pastoral use permits. We refer to a recent Four Corners episode which explored this issue.<sup>4</sup> The episode showed large swathes of cleared land in the NT and cotton cropping in areas where no non-pastoral use permit has been obtained.
10. Obtaining a pastoral land clearing permit, and cropping cotton without a non-pastoral use permit, bypasses important aspects of the non-pastoral use framework in the Pastoral Land Act, and relatedly the Native Title Act (e.g. procedural rights to native title holders).
11. **EJA submits that the advisory committee should consider the case study of Auvergne Station detailed above in its review of the future acts regime.**
12. **EJA submits that changes to the future acts regime should include ensuring that proponents are required to engage with native title holders in relation to land clearing for cotton, or other crops in the NT, and more generally that the future acts regime is updated to adequately account for the current approach to land clearing for cotton and other cropping in the NT.**

## Pastoral Land Clearing

13. In addition to issues related to cotton cropping and non-pastoral use permits, we note that broadscale land clearing has increased rapidly in the NT in recent years. Over 38,000ha of proposed clearing is currently under assessment by the NT Pastoral Land Board.<sup>5</sup>
14. There is no requirement under the Pastoral Land Act to notify or consult native title holders in relation to any of this proposed clearing, despite its potential interference with native title holders' rights and interests. Despite the fact that native title holders hold unique interests and connection to Country, if they wish to comment on pastoral land clearing applications they must follow the process available to the general public. Interested members of the public can monitor the pastoral land clearing applications

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<sup>3</sup> Daniel Fitzgerald, 'Auvergne Station shelves land clearing, cropping plans amidst court challenge, *Australian Broadcasting Corporation* (online, 31 May 2023) <<https://www.abc.net.au/news/rural/2023-05-31/auvergne-station-land-clearing-court-case-permit-revoked/102414582>> .

<sup>4</sup> 'Water Grab', *Four Corners* (Australian Broadcasting Corporation, 19 August 2024) <<https://www.abc.net.au/news/2024-08-19/water-grab/104244320>>.

<sup>5</sup> Northern Territory Government webpage 'Pastoral land clearing applications and permits' (online, accessed 20 February 2024) <<https://nt.gov.au/property/land-clearing/pastoral-land/pastoral-land-clearing-applications-and-permits>>. See full list of current applications listed as 'under assessment'.

webpage to see when land clearing applications are open for comment. Public comment periods generally range from two to four weeks, which is a very short timeframe to obtain instructions and prepare a submission.

15. We do not have appropriate expertise to comment on how the Native Title Act should be amended, but **EJA submits that any revisions to the future acts regime should:**
  - a. **Ensure native title holders are notified, consulted and, where appropriate, afforded rights in relation to actions that have the potential to interfere with native title rights and interests.**
  - b. **Ensure native title holders are supported to effectively engage with proposed land clearing and cropping in the NT on the pastoral estate.**