



21 February 2025

Australian Law Reform Commission  
Via email: [nativetitle@alrc.gov.au](mailto:nativetitle@alrc.gov.au)

Good afternoon,

**Submission to the Review of the Future Acts Regime being undertaken by the Australian Law Reform Commission**

Robe River Kuruma Aboriginal Corporation (RRKAC) RNTBC (ICN 7612) is the registered native title body corporate for the Determination Area and holds the native title of the Robe River Kuruma People on trust pursuant to the Native Title Act and the Determinations. RRKAC has been appointed by the Robe River Kuruma People to act as their agent.

The Determination Area comprises:

- (a) the determination of native title made by Justice Barker in the Federal Court of Australia on 1 November 2016 in the matter of *Finlay on behalf of the Kuruma Marthudunera People v the State of Western Australia* (No 2) [2016] FCA 1260 (WAD 6090 of 1998);
- (b) the determination of native title made by Justice Rangiah in the Federal Court of Australia on 26 April 2018 in the matter of *Finlay on behalf of the Kuruma Marthudunera People v the State of Western Australia* [2018] FCA 458 (Part B Determination); and
- (c) the revisions to the Part B Determination made by Justice Rangiah in the Federal Court on 27 January 2021 [2021] FCA 20.

RRKAC provides the following submission in response to the Australian Law Reform Commission's (ALRC) Issues Paper 50 on the proposed 'Review of the Future Acts Regime'. RRKAC understands there will be further opportunity to provide feedback subsequent to the release of a Discussion Paper later in 2025.

This submission is provided in a context in which RRRKAC is working with small, medium and large scale exploration and mining proponents, and various other proponents such as local government and service infrastructure providers. Concurrently, we are supporting ongoing cultural roles and responsibilities for the preservation, protection and maintenance of sensitive and significant Aboriginal heritage values in Robe River Kuruma Country. As such, we operate under numerous, and often competing heritage agreements, approvals and processes.

- The Future Acts regime provides limited, if any, recourse for Native Title Parties to refuse a proposed Future Act. As such, there is limited alignment with leading global standards related to Free, Prior and Informed Consent.
- The progression of an Expedited Procedure objection to Inquiry places a strong burden of proof on Native Title Parties, often requiring lengthy and costly evidence gathering by the Native Title Party. The process is structured so that tenement applicants can lodge an application, require the native title party to lodge all its evidence at great expense, and then withdraw with no consequence. Once an application is withdrawn, the Mining Act regime then means another application over the area will be immediately lodged. There is no mechanism to prevent this loop in WA given the limited long term protection options available to Native Title Parties under the heritage and land tenure regime. This places added pressure on Native Title Parties in relation to cost and capacity to undertake this process.
- The current Right to Negotiate process burdens Native Title Parties with significant administrative and legal costs, often prohibiting full participation in the Right to Negotiate process.
- There is no requirement for early engagement with Native Title Parties as part of determining if the future act is an expedited procedure.
- The Expedited Procedure provides limited recourse for Native Title Parties should the Grantee Party choose to proceed with activities without engaging with the Native Title Party.
- The future act regime is inadequate to recognise and respect the manner in which some native title rights are held or operate. For example, where rights are recognised under Intra Indigenous Land Use Agreements referenced in the determination, those Native Title Holders are not notified directly of future acts and are reliant on compliance by the counterparty Prescribed Body Corporate with the Intra Indigenous Land Use Agreement.
- Procedural rights in relation to water are meaningless and ineffective to protect the cultural importance of water, in particular groundwater. They effectively apply a



freehold type test which is not analogous to the relationship Native Title Holders have with waters and Country.

Sincerely,

*Nicholas Haney*

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