



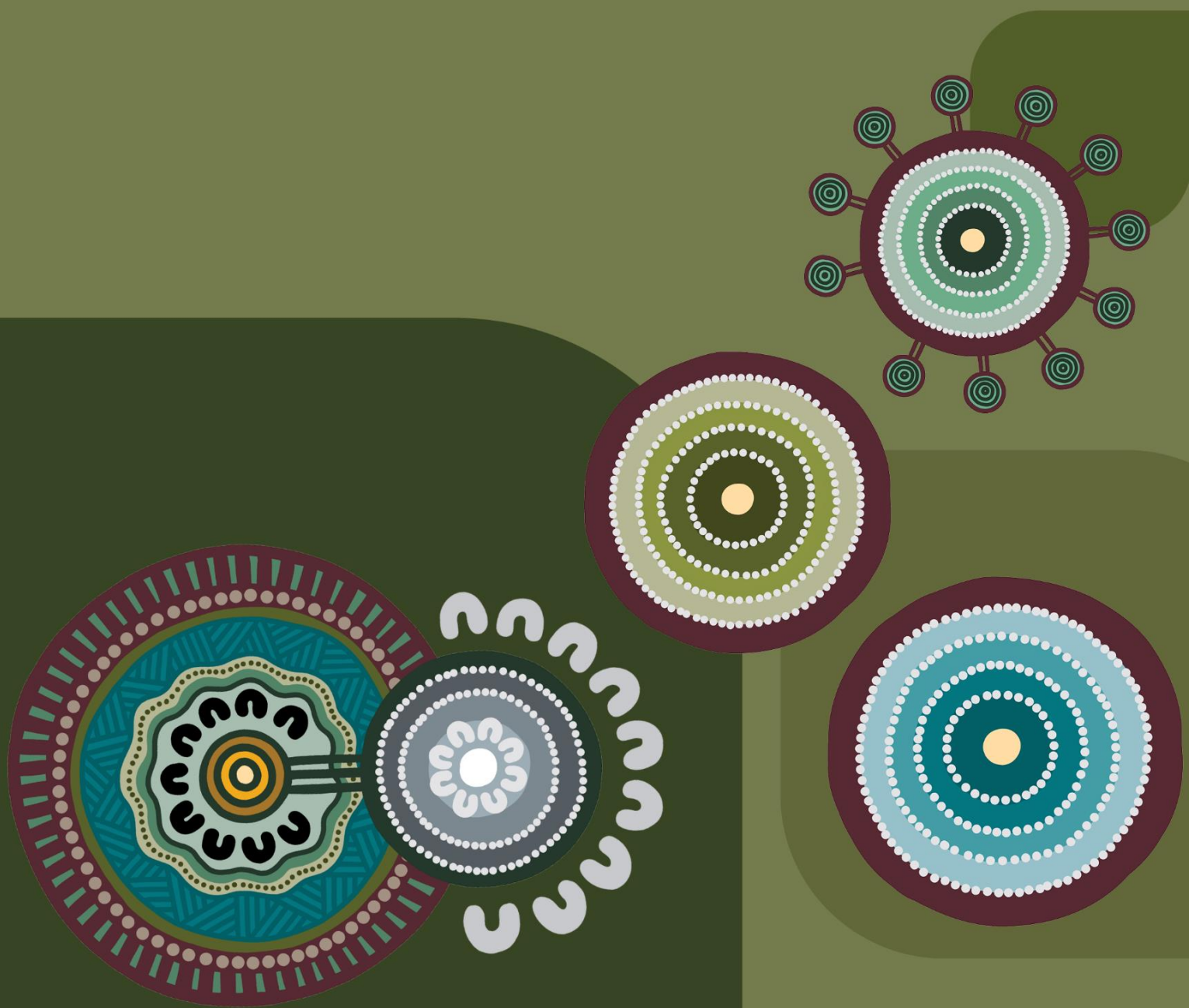
Australian Government  
Department of Agriculture,  
Fisheries and Forestry

# Australian Law Reform Commission

Review of the future acts regime of the Native Title Act 1993 (Cth)

Submission from the Australian Government Department  
of Agriculture, Fisheries and Forestry

March 2025



**Acknowledgement of Country**

We acknowledge the continuous connection of First Nations Traditional Owners and Custodians to the lands, seas and waters of Australia. We recognise their care for and cultivation of Country. We pay respect to Elders past and present, and recognise their knowledge and contribution to the productivity, innovation and sustainability of Australia's agriculture, fisheries and forestry industries.

Artwork: © Amy Allerton, contemporary Aboriginal Artist of the Gumbaynggirr, Bundjalung and Gamilaroi nations.

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# Introduction

The Department of Agriculture, Fisheries and Forestry (the department) welcomes the opportunity to provide the Australian Law Reform Commission (ALRC) with this submission as part of the ALRC's Review of the future acts regime of the *Native Title Act 1993* (Cth) (NTA).

The department's vision is to drive a more sustainable and prosperous Australia through biosecurity, agricultural production and trade, by working together to safeguard and grow sustainable agriculture, fisheries and forestry for all Australians. We support sector growth by assisting Australia's agriculture sector to be increasingly productive and internationally competitive in an ever-changing world. This includes leveraging opportunities to bring more Country into production, supporting new entrants to gain market access, and harnessing commercial opportunities for emerging products such as bushfoods<sup>1</sup>. We support sector resilience and sustainability through initiatives that enable agriculture, fisheries and forestry practices to contribute to a healthy, sustainable and low-emissions environment. This includes using Indigenous Knowledges to inform land and sea management practices that balance productivity with sustainability. We strengthen Australia's national biosecurity system by employing a risk-based approach to protect Country, the economy and people from potentially devastating weeds, pests and diseases. This includes delivering the highly successful Indigenous Biosecurity Ranger Program across Australia's northern frontier.

In developing this response, the department has considered recent reports and ideas in submissions that relate to the future acts regime (including those contained in Appendix A to the Issues Paper) and the NTA, as well as feedback gathered from First Nations farmers, fishers and foresters through the course of our policy work to drive greater meaningful economic inclusion of First Nations peoples in the sector.

This submission responds to Question 5 of the ALRC's Issues Paper to address what an ideal future acts regime could look like. Consistent with this portfolio's remit, this submission considers reforms to the future acts regime that would support sustained commercial growth in agriculture, fisheries and forestry, sector resilience and sustainability, especially where aligned with whole-of-government priorities, and First Nations outcomes. Opportunities identified to improve the current system, include:

1. raising awareness of the operation of the future acts regime, its application to the agriculture, fisheries and forestry industries and the benefits of meaningful engagement with Traditional Owners
2. enabling opportunities for partnerships and joint ventures between agricultural, fisheries and forestry proponents and Traditional Owners for mutually beneficial outcomes

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<sup>1</sup> Departmental expenditure on grants to support First Nations economic advancement currently includes \$9 million (Capacity-Building Grants Round) and \$2.5 million (Small Grants) under the Climate-Smart Agriculture Program, \$0.47 million to Northern Australia Aboriginal Kakadu Plum Alliance for the Agricultural Traceability Grants: Traceability Grants Program Round 3 alongside the NAAKPA Indigenous Bushfoods Provenance and Traceability Project and \$9.66 million for the Accelerate Adoption of Wood Processing Innovation Program (First Nations businesses).

3. increasing transparency and accountability of compensation amount calculations to facilitate informed project planning for agricultural proponents, and providing an opportunity for Traditional Owners to explore compensation options and be meaningfully involved in determining any changes in land use or economic outcomes on Country
4. enhancing the long-term viability of Indigenous Land Use Agreements (ILUAs) by addressing current power imbalances
5. introducing robust evaluation of agreements under the *NTA*, and improving clarity around engagement expectations, similar to current efforts to develop a First Nations engagement standard as part of the reform of the *Environment Protection and Biodiversity Conservation Act* (Cth) 1999 (*EPBC Act*).

The legislative intent of the future acts regime is to promote equality before the law by providing substantive and procedural rights for the protection of native title, and to provide greater workability and certainty for those engaging with the regime (House of Representatives 1997). However, limited resourcing – including in relation to financial resources, legal advice, and familiarity with and understanding of the future acts regime – has resulted in imbalances in negotiating power. This can restrict the ability of the future acts regime to operate as intended and limits meaningful engagement between agricultural proponents and native title parties. The ALRC's review of the future acts regime provides an opportunity for the agriculture, fisheries and forestry sector to partner with First Nations proponents and Traditional Owners to pursue mutually beneficial economic opportunities by bringing Country into production in a way that balances commercial, cultural, and community considerations.

## 1. Clarity around legislative requirements for industry

Across jurisdictions, there are many layers of land tenure regulation for parties to navigate and negotiate, requiring a tailored approach to guidance. There are consistent challenges for stakeholders across the country, highlighted in similar reforms. Under the *EPBC Act*, for example, a proposed project may affect First Nations people and require consultation, including with native title holders. The Independent Review of the *EPBC Act* highlighted the need to facilitate First Nations participation in decision-making and incorporate Indigenous Knowledges and views into regulatory processes. The National Environmental Standard for First Nations engagement and participation in decision-making (under development)<sup>2</sup> will support proponents on best practice for engaging or working with First Nations to meet statutory obligations under the *EPBC Act*. Proponents can face similar complexity and missed opportunities when navigating consultation and ensuring compliance with the *NTA*. This includes understanding requirements for agreement negotiations, avoiding unfair trading practices, and ensuring protections for all parties under contractual arrangements.

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<sup>2</sup> The National Environmental Standard for First Nations engagement and participation in decision-making (First Nations Standard) will be made under new environmental laws following passage of legislation. It is expected that the First Nations Standard will replace the Interim Engaging with First Nations People and Communities on Assessments and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (DCCEE 2023).

Clarity around land access permissions (and the potential requests for access fees), for locations subject to native title, would also benefit biosecurity agencies, and those working toward the purpose of delivering animal, plant and aquatic health surveillance operations. Further clarity on the opportunities and appropriate mechanisms for profit-sharing arrangements would also benefit the sector.

Additional guidance on the operation of the future acts regime, tailored to the needs of the agriculture, fisheries and forestry industries, with particular advice for jurisdictional considerations, would minimise disruptions to core business functions and support efficient industry engagement with the future acts regime. Current work underway at the department involves the modernisation of the *National Forest Policy Statement*, one aim of which is to better reflect First Nations people's forest management rights and aspirations.

Further, education about each parties' rights in relation to agreement making and required involvement, as either an agricultural proponent (NFF 2018) or native title party, will support overall fairness and better enable parties to manage the time involved and the costs incurred when dealing with the future acts regime.

## **2. Maximising economic opportunities for partnerships and joint ventures**

A collaborative approach to water and land management helps to support a stable and productive operating environment and enhances opportunities for industry growth. As outlined in the National Farmers' Federation 2030 Roadmap – Australian Agriculture's Plan for a \$100 Billion Industry, partnership with Indigenous landholders on a sustainable native title regime is identified as a key action to improve productivity of farm land, improve health of landscapes and create lasting arrangements with landholders (Ag2030). This would require uncertainties around native title to be resolved, clearly agreed principles for engagement, and meaningful co-operation on land use planning. First Nations involvement offers a unique value proposition for Australian agriculture, by contributing to productivity and aiding in the pursuit of industry's goal. Leveraging land, sea and water resource rights for economic purposes can be challenging for Traditional Owners, even where there is a positive native title determination. This limits economic growth for First Nations peoples and impedes broader economic benefits, and entrenches the assumption that Traditional Owners are not, or cannot be, the proponents for agricultural projects.

As highlighted by the department's First Nations Commitment, partnership approaches and potential business ventures between farmers, foresters, fishers and Indigenous land and sea managers will support First Nations economic self-determination in agriculture, fisheries and forestry (DAFF 2024). Some native title representative bodies are looking to joint venture arrangements with private landholders as a way to get around regulations governing land and limited ability to use land, to raise capital and flow profits of partnerships back to local First Nations peoples (JSCATSIA 2024; JSCNA 2022). As highlighted by the report from the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into economic self-determination and opportunities for First Nations Australians, partnerships must be based on equity and the strengths of First Nations people. To facilitate productive partnerships and joint ventures through the future acts regime, embedded mechanisms to support balance of power in negotiations and benefit sharing would be beneficial.

There is a desire from both First Nations and non-Indigenous agriculturalists to build relationships to expand employment and business opportunities through joint ventures, which can be supported through a balance of power in future acts negotiations, prescribed content and negotiation standards, increased transparency and clarity for all parties. Centrefarm Aboriginal Horticulture Limited offers an example of benefit-sharing and a partnership arrangement that proactively develops Aboriginal land assets for the benefit of Traditional Owners and facilitates broader, long-term economic development in the Northern Territory. Through cooperative relationships with Land Councils in the Northern Territory (also Native Title Representative Bodies under the *NTA*), and strong networks with Aboriginal landowners, government, industry and the finance sector, Centrefarm is driving meaningful engagement to support regional development and First Nations economic opportunities. This has enabled Centrefarm to develop an Economic Development Strategy for the Northern Territory mainland Aboriginal estate in collaboration with the Northern and Central Land Councils and establish the Aboriginal Land Economic Development Agency. This work is aimed at facilitating First Nations economic self-determination and enabling successful development of Northern Australia (Centrefarm Aboriginal Horticulture Limited 2025).

Industry benefit and growth, including from the pursuit of economic outcomes through the future acts regime, has the best chance of success when it meaningfully involves First Nations people, and enables leadership opportunities for First Nations people and communities to plan for their own development needs and identify strategies to best facilitate economic development. Enabling legislation will support inclusion of First Nations people to share Indigenous Knowledges to expand economic potential. This will further support innovation in agriculture, which is needed to respond to global challenges and build productivity.

### **3. Increased transparency regarding compensation**

It is currently unclear whether and where government keeps centralised records of future acts, including rights for native title proponents to seek compensation and compensation amount calculations determined in agreement making or by the Federal Court. As stated in the Issues Paper, native title parties already face difficulty in accessing compensation, including because of resourcing challenges in bringing a separate application in the Federal Court. Limited transparency of information regarding compensation exacerbates challenges for native title parties in reaching agreements and applications for compensation.

Current information restrictions also limit effective monitoring of how the future acts regime is operating and planning for anticipated outcomes. Further, it restricts parties from anticipating the required level of preparedness for negotiations and suitable arrangements based on precedent.

Publication of compensation amounts and calculations in a centralised and accessible location would enable adequate project planning and facilitate more productive conversations between proponents ahead of project commencement. It would allow appropriate allocation of resourcing by government or proponents and empower First Nations proponents in negotiations to anticipate potential financial remuneration for long-term undertakings. Careful consideration would need to be given to maintaining commercial and personal confidentiality, to ensure that businesses and Traditional Owners are not negatively impacted by increased transparency.



Application of data transparency principles would provide additional benefits for reporting on Indigenous Estate matters. Open and transparent provision of this data, especially regarding native title areas and ILUAs, is critical to reporting on forest management and land use matters within the Indigenous Estate. This approach would also support alignment with the government's integrity agenda, further enabling a balance of power in negotiations (as above), and build awareness of the operation of the future acts regime (NFF 2018).

## **4. Long-term viability of Indigenous Land Use Agreements**

If operating effectively, ILUAs offer a framework for building ongoing relationships between agricultural proponents (and/or government departments) and native title parties. They offer flexibility to address any matters concerning native title, including payment of financial compensation or opportunities with economic benefit, and use and management of land and waters. However, the current framework allows for clauses in ILUAs that may be problematic to long-lasting relationships between native title parties and proponents, or restrict long-term economic opportunities, such as non-disclosure and confidentiality restrictions on native title parties exercising their rights under other laws.

While ILUAs are the only timely compensation opportunity currently provided by the future acts regime, amendments to enhance functionality of ILUAs will inject funds into communities through compensation payments.

Greater regulation and guidance in the future acts regime on appropriate content and restrictions for ILUAs would be beneficial. This could include restrictions on the nature of clauses to be included in ILUAs that may prevent native title parties from accessing other statutory rights, and introduction of a mechanism to assess the validity and suitability of an ILUA (as below, for example). Alongside increased transparency around compensation calculations, such reforms to support meaningful ILUAs would enable injection of funds into communities through informed negotiations for compensation payments or employment opportunities, with potential benefits for the Commonwealth through reduced need for government-funded grants or programs and reduced burden on the courts over time.<sup>3</sup>

## **5. Robust evaluation of and standards for agreements and agreement-making**

Despite the potential benefits and impact of parties entering into an agreement through ILUAs, agreements are confidential with no prescribed content standards or evaluation mechanism to assess success and long-term viability. As a result, the only means for parties to meet benchmarks is based on prior experience of the native title party, their legal and other advisers and limited available

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<sup>3</sup> Other than by agreeing compensation as part of future act negotiations, the only way to obtain compensation amount is to apply to the Federal Court of Australia under Part 2 Division 5 of the *NTA* to obtain an award of compensation, determining the party liable to pay the compensation and the amount payable.



public information (as at 3). This lack of transparency can deter parties, who are distrustful of power imbalances and the potential of making a bad deal.

Introduction of prescribed content and engagement standards for agreements, including upfront consent processes and clear engagement principles, would enable a climate of trust and foster ongoing, productive relationships between agricultural proponents (and/or government departments) and native title parties. This aligns with existing government commitments, including \$11.8 million in the 2024–25 Budget context to support First Nations groups to participate in upfront consent processes for the Australian Carbon Credit Unit Scheme projects on land subject to native title (Commonwealth 2024). The funding and implementation of this project could be used as a blueprint or learnings for prescribed agreement standards responsive to industry needs. Other models could include the *EPBC Act*'s proposed First Nations Standard through Traditional Owner Representative Institutions (DCCEEW 2024).

While prescribed content and engagements standards will go a long way in supporting successful agreements, long-term impact of government policy is contingent on meaningful evaluations. Evaluation criteria or methodology development in partnership between the Australian Government, proponents and native title parties to monitor impact of agreements, similar to the model recommended by the Australian Human Rights Commission (AHRC 2009), would support sustainable relationships and impact of the future acts regime. It would support the government's commitment to give effect to Priority Reform One of the National Agreement on Closing the Gap regarding genuine partnerships and shared decision-making, and alignment with the Indigenous Evaluation Strategy (PC 2020) and broader Commonwealth Evaluation Policy.

Prescribed content and negotiating standards for agreements would support a better balance of power in negotiations, increase willingness for engagement and expand potential scope for suitability of more informal, less resource intensive agreements.

The future acts regime inquiry presents an opportunity to consider how native title frameworks can contribute to government priorities, including whole-of-government work to support First Nations economic self-determination and sector growth across agriculture, fisheries and forestry. Reforms can enable the future acts regime to meet its potential to provide certainty and empower native title parties and proponents with the tools they need to support impactful, long-lasting partnerships for shared benefits.

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