New South Wales
Aboriginal Land Council
ABN: 82 726 507 500

Dear Commissioner,

The New South Wales Aboriginal Land Council (NSWALC) welcomes the opportunity to respond to the Future Acts Regime: Discussion Paper (2025)[1].

The NSWALC is the state's peak, democratically elected body representing Aboriginal peoples in NSW. NSWALC has functions to protect and promote the rights of Aboriginal peoples, providing support to the NSW Aboriginal Land Rights Network. The Network is made up of 121 Local Aboriginal Land Councils (LALCs) and has a combined membership of over 30,000 Aboriginal people in NSW. The NSW Aboriginal Land Rights Network is the key vehicle to delivering social, cultural and economic outcomes to Aboriginal communities, and is the framework for achieving self-determination in NSW.

NSWALC strongly advocates for advancing the rights of Aboriginal peoples in NSW, including native title rights.

Response to specific questions

Response to Question 21

Should Part 2 Division 3 Subdivision F of the Native Title Act 1993 (Cth) be amended:

a. **to provide that non-claimant applications can only be made where they are made by, or for the benefit of, Aboriginal or Torres Strait Islander peoples;**
b. **for non-claimant applications made by a government party or proponent, to extend to 12 months the timeframe in which a native title claimant application can be lodged in response;**
c. **for non-claimant applications in which the future act proposed to be done would extinguish native title, to require the government party or proponent to establish that, on the balance of probabilities, there are no native title holders; or**
d. **in some other way?**

The Discussion Paper at [250]-[255] does not capture all the circumstances where non-claimant applications arise. In many instances in NSW, non-claimant applications arise because of the requirements of section 42 of the *Aboriginal Land Rights Act 1983* (NSW). This can often occur in circumstances where native title has been extinguished, including land which the NSW Government has continuously dealt with without regard to native title precisely because native title has historically been extinguished. They also often occur where there are no Aboriginal objectors to the determination.

In these circumstances, and contrary to [253] of the Discussion Paper, the determination that native title does not exist is not to 'secure interests which would otherwise require negotiating or engaging with native title parties'. Where native title has clearly been extinguished, it is not clear what the

[1] https://www.alrc.gov.au/wp-content/uploads/2025/05/NTFA-Discussion-Paper-2025.pdf

requirement for negotiation with third parties would be. If there are objectors to a non-claimant application, Federal Court processes allow for mediation in appropriate circumstances.

Recommendation 1

The ability to make a non-claimant application is an appropriate mechanism for a determination of native title to be made and should be retained, at least with respect to land held by Aboriginal Land Councils in NSW.

Furthermore, where there are historically extinguishing events there is no utility in the non-extinguishment principle applying.

Response to Question 28

Should the Native Title Act 1993 (Cth) be amended to provide for requirements and processes to manage the impacts of future acts on Aboriginal and Torres Strait Islander cultural heritage, and if so, how?

In NSW, LALCs have a legislated function under section 51(1)(d) of the ALRA to take action to protect and promote Aboriginal culture and heritage. They are embedded in community, connected to Country, and possess deep cultural knowledge and authority through their memberships. Any amendments to the *Native Title Act 1993* (Cth) must reflect this reality and ensure that LALCs are recognised and empowered in cultural heritage protection. Legal mechanisms should support and complement—not replace—Aboriginal community-controlled structures that can identify and work with the right people to speak for Country.

NSWALC is concerned that reform proposals which rely solely on native title mechanisms risk excluding LALCs, despite their statutory mandate and practical role in protecting heritage across diverse land tenures. While the *Native Title Act* and associated mechanisms, including Prescribed Bodies Corporate (PBCs), play an important role in cultural heritage protection, it should not be at the exclusion of other Aboriginal people and groups. It's important to note, for example, that in recent years 7/10 successful applications[2] to protect Aboriginal cultural heritage sites in NSW have been made by Local Aboriginal Land Councils. Despite this, the Discussion Paper[3] overlooks the significant role of LALCs in managing land, culture, and heritage. Future acts reforms that rely solely on native title mechanisms risk excluding many Aboriginal people in NSW, particularly in areas where native title has been extinguished, not yet determined, or does not apply.

As noted in the Discussion Paper, cultural heritage exists in places where native title does not. Equally, many traditional owners choose not to be involved in native title processes for a range of reasons, in circumstances where they may be involved in their Local Aboriginal Land Council.

Recommendation 2

Cultural heritage governance must be inclusive of both Prescribed Bodies Corporate and LALCs, and recognise their complementary roles. This approach aligns with Articles 18 and 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)[4] and will ensure the future acts regime is just, culturally legitimate, and responsive to the governance realities in NSW.

[2] Applications to protect ACH sites made under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*
[3] NTFA Discussion Paper (Parra 328–334)
[4] United Nations Declaration on the Rights of Indigenous Peoples, Articles 18 and 31.

Cultural authority does not reside in non-Aboriginal laws, legal mechanisms or structures. It is not conferred by non-Aboriginal Parliaments or non-Aboriginal Courts. In theory, while these non-Aboriginal mechanisms can recognise culture and cultural authority; they can never create or confer it. In reality, non-Aboriginal mechanisms working in isolation of Community will never be able to accurately navigate culture and cultural authority. Culture resides in people, not in laws or structures. While that is true, our community structures can identify and access the right people who have cultural authority, they are in their membership and their local communities.

NSWALC is committed to a future where cultural heritage reforms are inclusive, community controlled and led and ultimately enable protection and preservation of all Aboriginal culture and heritage. laws are community-led, culturally respectful, and effective.

The reform discourse on who speaks for Country risks narrowing protective mechanisms . While it is appropriate to have the right people speaking for a place or for Country, narrowing who might take legal action on behalf of the right people or Community as a whole to injunct or seek a protective order to prevent a harmful act will only undermine the limited current protections and create disputes and tensions between Commonwealth and State laws, and ultimately create delays in decision making while non-Aboriginal courts try to determine complex cultural issues.

Recommendation 3

NSWALC strongly advocates that any reform should not narrow legal standing to take action to protect cultural heritage.

Community controlled structures, including Aboriginal Land Councils and Native Title Prescribed Body Corporates, can navigate community and cultural matters to identify and even represent the right people in their memberships and communities. These structures do not have cultural authority themselves, but should have standing to take actions, on behalf of their members and communities, to protect cultural heritage from harm.

For reference, NSWALC's principles for Commonwealth First Nations Cultural Heritage reforms include:

a. **No reductions in ACH protections**. This includes that any standards or accreditation model must not reduce avenues for protecting sites via Commonwealth laws

b. **The focus of reforms must be to increase protections and enshrine self-determination & free, prior and informed consent**, not become a proxy for establishing new government entities or non-Aboriginal community controlled structures

c. **Laws should be based on self-determination, and as such, should not prescribe who speaks for Country.** These are sensitive matters for local Aboriginal communities to determine

d. **Any reforms, including to native title, must not undermine NSW Aboriginal Land Rights.** NSWALC does not support anything that would weaken rights and interests under the *Aboriginal Land Rights Act*1983 (NSW).

e. **Needs to be inclusive**, including of the *Aboriginal Land Rights Act* 1983 (NSW)

Thank you for the opportunity to provide input. We would be happy to provide further responses and look forward to contributing to the ALRC as this inquiry progresses. If you would like to further discuss, please contact the NSWALC Strategy and Policy Unit on policy.research@alc.org.au or [redacted].

Sincerely,

[redacted]

Sharon Close
A/Manager, Strategy and Policy
NSW Aboriginal Land Council

Date: 17 July 2025