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community deserves  
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21 July 2025

Australian Law Reform Commission  
PO Box 209  
Flinders Lane VIC 8009

By email: [nativetitle@alrc.gov.au](mailto:nativetitle@alrc.gov.au)

Dear Commission,

**RE: Discussion Paper: Review of the Future Acts Regime**

As the peak body for Queensland's 77 local governments, the Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide feedback to the Australian Law Reform Commission (ALRC) on the *Discussion Paper: Review of the Future Acts Regime* (Discussion Paper), released for consultation in May 2025.

The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities.

Queensland's local governments are significant stakeholders in the future acts regime, and overall support the principles of Native Title legislation. However, in the years since the *Native Title Act 1993* (NTA) was introduced, councils have experienced a range of challenges with the operation of the current framework.

Local governments undertake future acts primarily to provide essential community infrastructure and vital public services. For councils, particularly smaller, rural, and First Nations councils, native title compliance presents significant practical and resourcing challenges. Ensuring these councils can meet native title obligations efficiently and effectively, while fully respecting the rights and interests of native title parties, is therefore clearly in the broader public interest, and a key focus of this submission.

The LGAQ submission to the Discussion Paper was prepared with the support of Native Title legal specialists, Moray & Agnew, and includes detailed feedback and analysis throughout, as well as case studies supplied by Queensland councils (Attachment 1), and detailed feedback against each Proposal (Attachment 2), and Question (Attachment 3), posed by the Discussion Paper.

In total, the LGAQ submission makes 12 key recommendations for the consideration of the ALRC.

The LGAQ welcomes further discussion and engagement with the ALRC as it prepares its final report for the Federal Government by 8 December 2025. Please do not hesitate to contact Crystal Baker, Manager – Strategic Policy via [REDACTED] or phone [REDACTED] should you wish to discuss any aspect of this submission.

Yours sincerely,

A black rectangular box redacting the signature of Alison Smith.

Alison Smith  
CHIEF EXECUTIVE OFFICER

# Discussion Paper: Review of the Future Acts Regime

Submission to the  
Australian Law Reform Commission

July 2025

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## About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

# Discussion Paper: Review of the Future Acts Regime

## 1.0 Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Australian Law Reform Commission (ALRC) on the *Discussion Paper: Review of the Future Acts Regime* (the Discussion Paper), released for consultation in May 2025.

This submission on the Discussion Paper builds on the LGAQ's earlier submission to the Issues Paper in February 2025, expanding on specific concerns and practical impacts of the proposed reforms.

As the first comprehensive review of the *Native Title Act 1993* (the Native Title Act) since it was introduced, this process presents a critical opportunity to shape reforms that ensure the regime supports both the rights of Native Title parties and the practical realities of local government service delivery.

Local governments are key stakeholders in the future acts system and the review by the ALRC is of significant interest to the LGAQ and Queensland councils.

Consistent with the LGAQ Policy Statement, councils recognise, acknowledge and support the principles, processes and procedures contained within Federal and State Native Title legislation.

However, in the decades since its introduction, councils have also encountered significant challenges with the application of the Native Title Act, resulting in resourcing and cost impacts particularly relating to the provision of essential public infrastructure and services.

The LGAQ acknowledges and appreciates that several proposals and questions raised in the Discussion Paper closely align with some of the recommendations put forward in the LGAQ's submission on the Issues Paper.

In particular, the LGAQ welcomes the ALRC's consideration of a centralised registry to record future acts, the emphasis on the need for adequate resourcing for all parties, and the efforts to provide greater clarity around procedural requirements. These inclusions reflect an understanding of the practical challenges faced by local governments and represent a positive step toward a more effective and workable future acts regime.

Notwithstanding, many proposals contained in the Discussion Paper continue to raise concerns for councils around resourcing and cost impacts, including the proposed expansion of the "right to negotiate", the proposed replacement of existing future act procedures with an impact-based model, and the proposed compensation model. In this submission, the LGAQ raises issues experienced primarily by rural, remote and First Nations councils, and calls for clarity around how the proposed regime would interact with cultural heritage legislation and validation of existing infrastructure.

Local governments act in the public interest to deliver critical assets for their communities, including roads, water infrastructure, waste management facilities and other services which are fundamental to community wellbeing and liveability.

We continue to strongly support the ALRC's commitment to meaningful consultation, including with local governments, and emphasise the importance of ongoing engagement with councils across Queensland as the review progresses, particularly in rural, remote and First Nations communities.

## 1.1 Recommendations

In total, the LGAQ has made **12** recommendations for consideration of the ALRC in developing the Discussion Paper, outlined as follows:

- **Recommendation 1:** The LGAQ recommends the ALRC does not support proposed reforms to introduce a new system of Native Title Management Plans (NTMP) within the Native Title Future Act regime.
- **Recommendation 2:** The LGAQ recommends section 24KA of the Native Title Act 1993 be amended to explicitly include quarries, gravel pits, and other essential public infrastructure and services commonly delivered by local governments.
- **Recommendation 3:** The LGAQ recommends any changes to require the correct procedures to be followed to validate future acts include exceptions for relevant future acts that do not materially impact on native title rights or are carried out for a public purpose or benefit, such as the provision of transport infrastructure, water and sewerage systems, waste facilities, drainage, community infrastructure and public amenities.
- **Recommendation 4:** The LGAQ recommends the Federal Government establish a registration or certification mechanism for future acts, similar to the reporting process under section 24JAA of the *Native Title Act 1993*.
- **Recommendation 5:** The LGAQ recommends the ALRC ensures reforms to processes for amending and making agreements are progressed and consider the following elements:
  - a) The 'extra contractual effect' is maintained.
  - b) There is a fair process for authorisation of amendments to agreements that includes input from all native title holders relating to amendments.
  - c) Initiatives to improve the governance capacity of the Prescribed Body Corporate (PBCs) are developed.
  - d) Future acts done under an agreement with the actual or ostensible authority of a PBC representative are valid.
  - e) Adequate Federal Government resourcing of local government proponents, particularly where the costs of negotiation and authorisation meetings are to be met by the proponent.
- **Recommendation 6:** The LGAQ recommends the ALRC does not support:
  - the proposal to repeal and substitute Part 2, Division 3 of the *Native Title Act 1993* with an impact-based model. Instead, Part 2, Division 3 should be amended to clarify its application to public infrastructure and services, including ancillary activities such as sewerage treatment, regional airports, and gravel extraction for construction and maintenance works.

- If an impact-based model is developed, exemptions must be created for the provision of public services and facilities, and the scope or definition of public services must be widened.
- **Recommendation 7:** The LGAQ recommends the Federal Government ensures any ongoing compensation scheme relating to future acts is equivalent to the compensation for loss of Native Title rights that currently exists.
- **Recommendation 8:** The LGAQ recommends the ALRC ensures proposed amendments to the Native Title Act do not empower the National Native Title Tribunal (NNTT) to adjudicate on 'royalties' or future income or profits under future agreements where Native Title party rights to negotiate are elevated to include acts involving facilities and services delivered by local government.
- **Recommendation 9:** The LGAQ recommends the ALRC supports the reinstatement of the Attorney General's Native Title Respondent Financial Assistance Scheme as part of the Native Title determination process.
- **Recommendation 10:** The LGAQ recommends the ALRC supports the establishment of a dedicated, ongoing Federal Government funding regime for both local government proponents and native title parties to participate in and comply with future act processes. This should include the reinstatement of the former Native Title Officer Scheme.
- **Recommendation 11:** The LGAQ recommends the ALRC and Federal Government ensure any changes requiring procedural compliance to validate any future acts include clear exceptions for acts that do not materially impact Native Title rights or are carried out for a public purpose, such as the provision of essential infrastructure and services. These exceptions are critical to ensuring the regime remains practical and does not hinder local government service delivery.
- **Recommendation 12:** The LGAQ recommends the ALRC does not progress proposals 1, 6, 7, 8, 12, and 13 in their current form. Further consultation and policy design work is required to ensure these reforms are practicable, appropriately resourced, and commensurate with local government capabilities.

The LGAQ welcomes further engagement by ALRC as this work is progressed throughout 2025.

Please do not hesitate to contact Crystal Baker, Manager – Strategic Policy via email: [Crystal\\_Baker@lgaq.asn.au](mailto:Crystal_Baker@lgaq.asn.au), or Jarrod Hellmuth, Lead – Roads & Transport via email: [Jarrod\\_Hellmuth@lgaq.asn.au](mailto:Jarrod_Hellmuth@lgaq.asn.au) or phone 1300 542 700 should you wish to discuss any aspect of this submission.

## 2.0 Introduction

Since the commencement of the native title claim system under the *Native Title Act 1993*, Queensland local governments have actively engaged in native title processes, recognising their critical relevance to council land use planning, service delivery, and community infrastructure roles.

As respondent parties, local governments have played an essential part in resolving Native Title claims, while also contributing significantly through native title agreements. These agreements have supported the delivery of infrastructure and essential services, facilitated economic development, and helped establish constructive and enduring relationships between councils and Traditional Owners across the state.

Consistent with the LGAQ Policy Statement, Queensland councils acknowledge and support the principles, processes and procedures contained within Federal and State government Native Title legislation. However, local governments as the level of government closest to the community, have also experienced firsthand, several challenges with the operation, scope and interpretation of the current future acts regime.

These challenges often arise in the context of delivering essential public infrastructure and services such as roads, housing, water, and waste management. Councils must navigate complex Native Title compliance obligations without the legal and financial resources of private proponents, creating risks of delay, cost overruns and project abandonment.

In February 2025, the LGAQ made a submission<sup>1</sup> to the Australian Law Reform Commission (ALRC) on the *Issues Paper: Review of the Future Acts Regime*, outlining eight specific recommendations designed to address longstanding operational, legal and financial challenges Queensland councils face in complying with Native Title future acts requirements.

Many of these recommendations remain highly relevant in the context of the potential reforms and proposals outlined in the ALRC Discussion Paper and have been included throughout this submission, including the need for financial assistance to local governments and for practical reform that supports effective, fair and workable outcomes for all parties.

Councils are particularly concerned about the risk of unnecessary additional process layers, such as the proposed Native Title Management Plans, which may delay or complicate the delivery of essential services. There is strong support for maintaining and refining existing agreement making frameworks, including ILUAs, with a focus on improving governance within PBCs and ensuring local governments are not disproportionately burdened with negotiation and compliance costs.

The submission calls for a cautious approach to statutory reform, including retaining Part 2, Division 3 of the Native Title Act with targeted amendments rather than wholesale replacement with an untested impact-based model. There is also a clear need to clarify how compensation is approached and delivered, and to establish a consistent, transparent certification or registration mechanism for future acts to ensure accountability and procedural clarity.

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<sup>1</sup> LGAQ Submission: *Issues Paper – Review of Futures Acts Regime* (February 2025) – available on the ALRC website [here](#).

On behalf of Queensland councils, the LGAQ seeks that these matters are considered as part of the ALRC review and incorporated into the ALRC recommendations made to the Federal Government.

Importantly, this submission to the ALRC on the Discussion Paper, should also be read in conjunction with the LGAQ submission to the ALRC in February 2025 on the Issues Paper.

## 2.1 LGAQ Policy Statement

The LGAQ Policy Statement<sup>2</sup> is a definitive statement of the collective voice of local government in Queensland and provides the following key agreed policy positions of local government that are relevant in the context of the Review of the Future Acts Regime:

### 6.1.6 Cultural Heritage

- 6.1.6.1 Local government acknowledges and supports the recognition, protection and conservation of First Nations cultural heritage.
- 6.1.6.2 Local government supports streamlined operational processes and procedures associated with the recognition, protection and conservation of First Nations cultural heritage to ensure they are practical, effective and cost efficient.
- 6.1.6.3 Local government supports the development of First Nations protocols or other measures that assist in integrating cultural heritage values into local planning instruments and development assessment processes.

### 6.3.1 Native Title

- 6.3.1.1 Local government recognises, acknowledges and supports the principles, processes and procedures contained within Federal and State Native Title legislation.
- 6.3.1.2 Local government supports collaboration between the State Government, National Native Title Tribunal, Native Title representative bodies, councils and Traditional Owners to achieve consent for native title determinations. If consensus cannot be realised, local government acknowledges the need to resolve native title determinations through court processes.
- 6.3.1.3 Local government acknowledges that there are relative levels of impact on native title on rural and urban communities. Local government supports the State Government identifying and developing administrative and legislative solutions to ensure the specific needs of rural and urban communities are met.

## 2.2 LGAQ Annual Conference Resolutions

The LGAQ is committed to member-driven advocacy and working with member councils to build stronger local governments and more resilient local communities. In the context of the review of the Future Acts Regime, the following LGAQ Annual Conference resolutions passed by Queensland councils, are also directly relevant:

**Resolution 27 (2023) Renewal of Quarry Sales Permits - Urgent State Government action to resolve the increasingly concerning issues surrounding the renewal of quarry sales permits to comply with the *Native Title Act 1993***

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<sup>2</sup> <https://www.lgaq.asn.au/downloads/file/183/2019-lgaq-policy-statement>

*The LGAQ calls on the State Government to give the highest priority to expediting solutions for the renewal of quarry sales permits or the granting of new permits that comply with the Native Title Act 1993. The process of establishing a non-claimant application on areas where there is no Native Title Prescribed Body Corporate needs to be initiated as a priority in all relevant areas.*

**Resolution 28 (2022) Commonwealth Attorney General's Financial Assistance Scheme for Native Title – Continuation of Funding**

*The LGAQ calls on the Federal Government to continue to fund the Commonwealth Attorney General's Financial Assistance Scheme under the Native Title Act 1993 until all claims within Queensland are determined.*

### 3.0 LGAQ Response to the Discussion Paper

In preparing this submission, the LGAQ has engaged with Queensland councils and drawn advice from Native Title legal specialists, Moray & Agnew, with experience in the *Native Title Act 1993* and the operational realities of local government.

Overall, there are 14 proposals contained in the Discussion Paper that are of relevance to local governments. The LGAQ supports in principle 7 out of the 18 proposals presented in the Discussion Paper but has raised concerns with the remaining 6 of relevance to local government.

In many cases, support is conditional on further detail being provided, with several proposals lacking clarity to accurately assess the implications for local government. The absence of this detail has limited the LGAQ's ability to provide definitive positions in some instances, particularly where there may be unintended consequences for councils delivering essential services or infrastructure in the public interest.

Section 3.0 of this submission has been structured around the most significant and high impact themes emerging from the ALRC Discussion Paper, as identified through engagement with Queensland local governments. These key areas, reflect the issues of greatest concern to councils in their role as infrastructure providers and proponents providing in the public interest. Case studies presented in **Attachment 1** and detailed commentary on each proposal and consultation question in the Discussion Paper included in **Attachment 2** and **Attachment 3** which form the basis of the LGAQ's submission.

The LGAQ welcomes the opportunity to engage further as the review progresses and remains committed to working with ALRC and the Federal Government to ensure the future acts regime is fair, functional, and capable of supporting both native title outcomes and community development.

#### 3.1 Future act validity including proposal to establish Native Title Management Plans (NTMP)

In considering the ALRC proposal to introduce a new pathway for future acts validity, referred to as 'Native Title Management Plans' (NTMPs), the LGAQ has identified several issues for Queensland councils.

The LGAQ understands the proposed amendments would enable Prescribed Bodies Corporate (PBCs) to develop management plans (subject to a registration process) that provide alternative procedures for how future acts can be validated in the relevant determined area. This would operate alongside ILUAs and the generally applicable statutory procedures and be developed where an ILUA does not apply.

Key concerns relating to this proposal include:

- the introduction of a new pathway to future acts validity will create additional layers of regulation that add to complexity of the native title and future acts regime,
- a NTMP does not require the government parties' consent.

- there is a lack of clarity in the parameters and scope of a NTMP that can be developed by a PBC,
- the NTMP proposal provides for a 'veto right' where the native title party may "effectively withhold consent" and where consent is withheld, councils would need to go through a determination process via the National Native Title tribunal and/or reach agreement under an ILUA to validate the future act,
- there is no indication as to how long the process for developing an NTMP will take nor the extent of input needed from the native title group members,
- there are no exemptions for public works or essential infrastructure projects and without exemptions, NTMPs can be another tool, similar to ILUAs, that could create uncertainty for local government operations (such as access to quarries and gravel pits),
- there is a risk of imposing significant delays on critical infrastructure projects due to extended negotiation timeframes and uncertainty, resulting in increased project holding costs, disrupted maintenance schedules and additional administrative and legal burdens for councils already operating under tight resource constraints

Rather than introducing the NTMP process, the objectives could be achieved by refining the existing legislative processes or procedures relating to the negotiation of Indigenous Land Use Agreement (ILUA) processes.

While the parameters by which an NTMP is to be developed are not particularised, there are concerns that the unilateral development of alternative legislative processes for validating future acts, is an inappropriate delegation of legislative power, including against government parties.

The LGAQ considers the current future act regime already provides adequate provisions for addressing future acts, however, those provisions should be amended to provide clarity for acts that are ancillary to the provisions of facilities and services to the public.

As highlighted in the LGAQ's earlier submission to the Issues Paper, the LGAQ recommends that the ALRC consider expanding the classes of infrastructure and public services recognised under section 24KA to include commonly delivered council infrastructure such as gravel pits, regional airports, and water and waste facilities. This would provide a more practical, fit-for-purpose mechanism for validating essential works and reduce the unnecessary delays and holding costs local governments face.

To support implementation and improve procedural certainty, the LGAQ also recommends the Federal Government establish a registration or certification mechanism for future acts, similar to the reporting process under section 24JAA of the Act. This mechanism would provide clarity, confirm compliance, and increase transparency for all parties engaged in future act processes.

- **Recommendation 1:** The LGAQ recommends the ALRC does not support proposed reforms to introduce a new system of Native Title Management Plans (NTMP) within the Native Title Future Act regime.

- **Recommendation 2:** The LGAQ recommends that section 24KA of the *Native Title Act 1993* be amended to explicitly include quarries, gravel pits, and other essential public infrastructure and services commonly delivered by local governments.
- **Recommendation 3:** The LGAQ recommends any changes to require the correct procedures to be followed to validate future acts include exceptions for relevant future acts that do not materially impact on native title rights or are carried out for a public purpose or benefit, such as the provision of transport infrastructure, water and sewerage systems, waste facilities, drainage, community infrastructure and public amenities.
- **Recommendation 4:** The LGAQ recommends the Federal Government establish a registration or certification mechanism for future acts, similar to the reporting process under section 24JAA of the *Native Title Act 1993*.

### 3.2 Reform relating to Agreement Making and Dispute Resolution within Agreements

The proposals contemplated by ALRC in relation to ILUAs are aimed at improving transparency, accountability, and efficiency, while preserving their flexibility.

The nature of an ILUA is unique because it ascribes an “extra contractual effect” which binds all native title holders for the area covered by the agreement, including those who were not party to original negotiations. Therefore, some of the proposed changes aimed at streamlining approval of agreement processes may be difficult to implement, while still affording the entire native title group an opportunity to be heard in relation to the content of agreements.

Further, it is considered that proposed changes to the content of and the way commercial agreements are negotiated have the ability to reduce flexibility and therefore may diminish a party’s willingness to come to the negotiating table.

- **Recommendation 5:** The LGAQ recommends the ALRC ensures reforms to processes for amending and making agreements are progressed and consider the following elements:
  - a) The ‘extra contractual effect’ is maintained.
  - b) There is a fair process for authorisation of amendments to agreements that includes input from all native title holders relating to amendments.
  - c) Initiatives to improve the governance capacity of the Prescribed Body Corporate (PBCs) are developed.
  - d) Future acts done under an agreement with the actual or ostensible authority of a PBC representative are valid.
  - e) Adequate Federal Government resourcing of local government proponents, particularly where the costs of negotiation and authorisation meetings are to be met by the proponent.

### 3.3 Reform to statutory procedures

The Discussion Paper contemplates replacing the current future act processes contained in Part 2, Division 3 of the *Native Title Act* with an ‘impact-based’ assessment of future acts.

Arguably, the current future act regime is already structured in such a way, to the extent of the procedural rights afforded to the native title party.

However, example 5 provided in the Discussion Paper, as to how an impact-based model may apply in relation to the grant of quarry permits, proposes that the level of assessment is only linked to the intensity and scale of the future act. This disregards other matters such as underlying tenure and the proposed use (e.g. public vs private or commercial use).

This can be contrasted with the construction of a water pipeline used in example 6 of the Discussion Paper, which is contemplated to trigger a higher level of assessment. Consultation question 15 in the Discussion Paper, contemplates whether specific exclusions should apply in such circumstances where the activities are works, facilities or infrastructure for the public.

While there may be some merit in developing a new impact-based assessment model, the effectiveness of such a model depends on how the scheme is designed. There is insufficient detail contained in the Discussion Paper as to how the system would operate and the extent of the exclusions that may apply. If an impact-based model were to be adopted it would be appropriate to have exclusions relating to public services, infrastructure and compulsory acquisition.

Local governments routinely undertake low impact works such as road maintenance and minor upgrades to infrastructure that serve the public interest and have negligible native title impact. Requiring full procedural compliance in these instances imposes unnecessary costs and delays on councils, without advancing native title protections. These exceptions should be framed to reflect the essential, non-commercial nature of local government functions.

Therefore, it is imperative that further consultation occur with relevant stakeholders prior to an impact-based assessment model of future acts being introduced.

- **Recommendation 6:** The LGAQ recommends the ALRC does not support:
  - the proposal to repeal and substitute Part 2, Division 3 of the *Native Title Act 1993* with an impact-based model. Instead, Part 2, Division 3 should be amended to clarify its application to public infrastructure and services, including ancillary activities such as sewerage treatment, regional airports, and gravel extraction for construction and maintenance works.
  - If an impact-based model is developed, exemptions must be created for the provision of public services and facilities, and the scope or definition of public services must be widened.

### 3.4 Compensation and financial agreements

The Discussion Paper considers how compensation relating to future acts and 'other payments' should interact with existing provisions of the Act. There are several relevant aspects of payment and compensation raised in the Discussion Paper, including:

- (a) The desire to preserve the freedom of agreement making;
- (b) Quantifying compensation for impairment of native title; and
- (c) Conditions relating to payments on the doing of a future act.

Fundamentally, Native Title rights consist of usufructuary property rights<sup>3</sup>. Existing provisions in Part 2, Division 5 of the Act provide for compensation relating to the loss of those 'usufructuary rights' and provide for quantification of such to ensure compensation is not payable more than once for the same act<sup>4</sup>, and that the quantum of compensation does not exceed the value of the interest (as for a freehold estate)<sup>5</sup>.

The extent to which the usufructuary rights may be commercialised has not been widely determined, however there is some indication that Native Title rights may be framed to include commercial interests.<sup>6</sup>

The proposal to amend the future act regime to include a broader scope of the right to negotiate, together with a proposed broadening of the scope of matters which an arbitral body may determine under Section 38 (2) may impact on Queensland local governments.

The prohibition as is currently contained in Section 38(2) of the Act is reflective of those rights and interests reserved to State and Territory Governments, such as the right to collect royalties. If Section 38(2) were amended remove the prohibition, a Commonwealth arbitral body would be empowered to decide matters currently reserved to the Federal Court or the relevant state or territory body to determine under the relevant State or Territory law.

Accordingly, these commercial arrangements should continue to be agreed between the parties but not be the subject of determination by National Native Title Tribunal (NNTT).

- **Recommendation 7:** The LGAQ recommends the Federal Government ensures any ongoing compensation scheme relating to Future Acts is equivalent to the compensation for loss of Native Title rights that currently exists.
- **Recommendation 8:** The LGAQ recommends the ALRC ensures proposed amendments to the Native Title Act do not empower the National Native Title Tribunal (NNTT) to adjudicate on 'royalties' or future income or profits under future agreements where Native Title party rights to negotiate are elevated to include acts involving facilities and services delivered by local government.

### 3.5 Resourcing changes and implementation

The Discussion Paper identifies that adequate resourcing is necessary for all stakeholders for the future act regime to operate effectively<sup>7</sup>, but with a particular focus on native title parties. The LGAQ considers it is necessary for local government proponents (especially small First Nations and rural and remote local governments that are particularly impacted by the need to comply with Native Title future act processes) are adequately resourced to meet the costs associated with native title proponents performing certain functions. This includes, but is not limited to, those provided for in Section 60AB of the Act.

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<sup>3</sup> s 223 *Native Title Act (Cth)*; *Akiba v Commonwealth* [2013] HCA 33 at para 9;

<sup>4</sup> *Native Title Act* 1993 (Cth), s 49.

<sup>5</sup> *Native Title Act* 1993 (Cth), s 51A.

<sup>6</sup> *Akiba v Commonwealth* [2013] HCA 33 at para 21;

<sup>7</sup> ALRC Discussion Paper 88, May 2025, pg 59

- **Recommendation 9:** The LGAQ recommends the ALRC supports the reinstatement of the Attorney General's Native Title Respondent Financial Assistance Scheme as part of the Native Title determination process.

Local governments often engage with future act processes to deliver essential infrastructure such as roads, water and sewerage services, waste facilities and community buildings. These are public interest projects that do not generate commercial return but are vital for community wellbeing and liveability. Unlike private proponents, councils operate within constrained budgets, with limited access to legal or technical expertise. Without financial assistance to meet procedural obligations or cover costs associated with agreement-making and compliance, many councils, particularly in remote and Indigenous communities, face significant barriers to participation.

Some of the reforms proposed in the Discussion Paper risk exacerbating these challenges unless a deliberate focus is placed on equitable resourcing for all parties. Dedicated funding, accessible guidance and reinstated support programs such as the former native title officer scheme will be essential to ensure the future acts regime functions fairly and effectively.

- **Recommendation 10:** The LGAQ recommends the ALRC supports the establishment of a dedicated, ongoing Federal Government funding regime for both local government proponents and native title parties to participate in and comply with future act processes. This should include the reinstatement of the former Native Title Officer Scheme.

In addition, the ALRC should recommend the creation of a practical and legally certain mechanism for infrastructure constructed for public benefit. Without this, compliance delays, increased project costs and service delivery failures will continue to undermine outcomes for both councils and native title holders, and create additional challenges, costs and workability issues for councils acting in the public interest in an already complex future acts regime, costly and unworkable for local governments acting in the public interest.

- **Recommendation 11:** The LGAQ strongly recommends the ALRC and Federal Government ensure any changes requiring procedural compliance to validate any future acts must include clear exceptions for acts that do not materially impact Native Title rights or are carried out for a public purpose, such as the provision of essential infrastructure and services. These exceptions are critical to ensuring the regime remains practical and does not hinder local government service delivery.

### 3.6 Proposals requiring further refinement

While the LGAQ welcomes the opportunity to engage with the ALRC Discussion Paper and acknowledges the intent to improve the future acts regime, several proposals are not supported in their current form.

Those proposals include Proposal 1, Proposal 6, Proposal 7, Proposal 8, Proposal 12, and Proposal 13.

Many of these proposals raise legitimate concerns for local government due to a lack of clarity and a lack practical implementation detail, or due to potentially adverse implications for service delivery, infrastructure provision and legal certainty.

The LGAQ considers that without further refinement and detail, these proposals risk creating additional layers of complexity, administrative burden or unintended legal consequences which councils may not have the capacity or resources to manage effectively. As the level of government closest to the community, councils must operate within systems that are clear, practical, and commensurate with their statutory responsibilities and resource constraints.

The LGAQ reiterates its strong support for an equitable, workable future acts system, but calls on the ALRC not to progress Proposal 1, Proposal 6, Proposal 7, Proposal 8, Proposal 12, and Proposal 13 without substantial further consultation, detail and refinement.

- **Recommendation 12:** The LGAQ recommends the ALRC does not progress proposals 1, 6, 7, 8, 12, and 13 in their current form. Further consultation and policy design work are required to ensure reforms are practicable, appropriately resourced and commensurate with local government capabilities.

## 4.0 Conclusion

Queensland's local governments support the underlying principles of native title and acknowledge the critical role Native Title legislation plays in delivering fair and equitable outcomes.

On behalf of our member councils, the LGAQ welcomes the opportunity to engage with the ALRC and to give feedback to the Discussion Paper. Throughout this process the LGAQ has identified several critical issues that require further consideration.

This includes the LGAQ's strong opposition to the introduction of Native Title Management Plans (NTMPs). Reforms to agreement-making and dispute resolution must maintain flexibility and practicality, avoiding overly prescriptive or burdensome arrangements. Compensation frameworks should include clear regulatory guidance, explicitly excluding any ongoing royalty-type payments determined by the NNTT for public infrastructure.

It is also essential to clarify existing legislative uncertainties concerning acts addressed by native title determinations, and to establish streamlined compliance pathways tailored specifically for public-purpose infrastructure, recognising the public-interest role local governments fulfil.

Most critically, equitable resourcing is required through statutory amendments guaranteeing dedicated funding support (such as reinstating financial assistance under Section 213A of the Act). Practical Commonwealth or State-developed tools and targeted capacity-building programs, alongside relationship-building initiatives between councils and native title parties, are essential.

Local governments remain committed to respectful engagement with native title processes and delivering vital public services.

The LGAQ has made 12 recommendations for the consideration of the ALRC. Achieving a fair, efficient, and workable future acts regime depends on these key reforms and genuine statutory support, and the LGAQ urges ALRC to incorporate these recommendations into its final proposals.

## Attachment 1: LGAQ Case Studies

### Summary

To demonstrate the need for reform and to illustrate issues and challenges local government is experiencing with the current future acts regime, including funding and resourcing implications, the LGAQ consulted with Queensland councils to provide examples of how resourcing native title future act and compensation obligations could be improved. Two case studies are provided below:

- Case Study 1: Funding and Resources
- Case Study 2: Facilities and service to the public

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### Case Study 1 – Funding and Resources

#### Relevant Issues

- A Commonwealth agency initiated a community project within the Local Government Area.
- The Commonwealth refused to agree to be an 'opt-in party' to the Indigenous Land Use Agreement (ILUA) which provided for compensation.
- The impacted First Nations Local Government was required to pay for the cost of Native Title Compensation.

#### Context

In this case example, a First Nations local government was the trustee of land where the Commonwealth proposed to construct community infrastructure.

The relevant future act associated with the project involved an assessment of compensation as provided for within the ILUA between the local government and the Native Title Party. The ILUA made provision for the ability for third party agencies, such as the State or Federal Government, to 'opt-in' as a proponent and agree to be bound under the terms of the ILUA.

#### Impact

The Commonwealth refused to be the 'opt-in' party under the terms of the deed. The effect being that despite the project being a Commonwealth initiative, the local government was required to pay native title compensation.

The local government was burdened with the responsibility to pay Native Title compensation. Being a First Nations local government, it does not have the ability to levy rates, meaning the local government needed to source funds to pay compensation from elsewhere.

#### Recommendation

The State and Commonwealth must ensure that funded projects for the delivery of community infrastructure allow for costs associated with future act, including compensation.

## Case Study 2 – Future Acts involving future Planning Needs and Resilience Actions

### Relevant Issues:

1. Discussion Paper Question 21 – Reduce Scope of Non-Claimant applications need to remain the same.
2. 'Impact Assessment' model and provisions such as s24KA, against Proposal to introduce 'Veto' Rights without exceptions.

### Key Issues

Following recent floods in Queensland, a council is considering a proposal to relocate an entire township for the future resilience of the community. The proposed new site is comprised of tenures that are conducive to establishing a new township but is over an unclaimed area for native title purposes.

A current mechanism exists under the Act that allows for the local government to lodge a non-claimant application, which allows for relevant tenure grants be made if no Native Title claim were to be made over the relevant area.

The LGAQ's response to the question posed in Question 21 a., as to whether s 24F should be amended to limit non-claimant application to Aboriginal or Torres Strait Islanders, is therefore that it should not be amended.

Similarly, the timeframe to lodge a response should not be extended. In Queensland, the State Government's policy position is that it would not approve an extinguishing future act until such time as a negative determination is made. The LGAQ is also of the view that there is adequate jurisprudence guiding the evidentiary requirements to establish that native title does not exist.<sup>8</sup> In circumstances where native title is not apparent, there needs to be a process to establish that no Native Title exists and a process within the Act to allow for a Non-Native Title party to reach that conclusion.

Further to the above, if a Native Title claim is made over the relevant area which is the subject to a non-claimant application and Native Title is determined to exist, under the current regime, the only practicable means to create the necessary tenures in the example above, would be for the local government to enter into an extinguishment ILUA. There are currently no provisions that requires the Native Title party to agree.

There are also limitations of the local government's powers under the relevant state compulsory acquisition legislation to acquire land for the specified purposes.<sup>9</sup> If an impact-based model for assessing Native Title were to be imposed without adequate exclusions for facilities and services for the public, the ability of local government to undertake future resilience, public infrastructure and land planning activities would be severely restricted.

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<sup>8</sup> See for example, *Mace v State of Queensland* [2019] FCAFC 233; *Wagonga Local Aboriginal Land Council v Attorney-General of New South Wales* [2020] FCA 1113; *O'Shea v State Minister for the State of Queensland* [2025] FCA 52; *Gidyea Cattle Company Pty Ltd v State Minister for the State of Queensland* [2025] FCA 117; *Lord Penna Land Holdings Pty Ltd v State Minister for the State of Queensland* [2025] FCA 643; *Whip v State Minister for the State of Queensland* [2025] FCA 644

<sup>9</sup> *Acquisition of Land Act 1967* (Qld), s 3, Schedule 1.

## **Recommendations**

That Part 2 Division 3 Subdivision F is not amended as suggested in Question 21 of the Discussion paper.

If an impact-based model is developed there is a need to allow for exemptions for facilities and service to the public and consideration should be given to widening the scope or definition of public services.



Every Queensland  
community deserves  
to be a liveable one



Every Queensland  
community deserves  
to be a liveable one

## Attachment 2 – LGAQ Response to Discussion Paper Proposals

| ALRC Proposals | Description                                                                                                                                                                                                                                                | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Proposal 1     | The <i>Native Title Act 1993</i> and Native Title (Prescribed Bodies Corporate) Regulations 1999 should be amended to allow for the expanded use of standing instructions given by common law holders to Prescribed Bodies Corporate for certain purposes. | <p>The LGAQ does <b><u>not support</u></b> this proposal in its current form.</p> <p>The current issues regarding authority to speak on behalf of common law holders include:</p> <ul style="list-style-type: none"><li>(a) The NT rights of individual or groups of the common law holders may vary within the overall claim group. This can present issues when seeking Native title consents for projects.</li><li>(b) Limits of authority for PBC to speak on behalf of the Common law holders for specific projects.</li></ul> <p>The concern is that giving greater authority to a single party, such as a PBC or a select group of representatives, may exclude or silence the views of other native title holders who are not directly engaged in the process.</p> <p>Without capacity building or mechanisms to capture Traditional Owner decisions making processes, this proposal will not serve the interests of entire NT holder group and may be counterproductive in providing greater certainty and efficiency to proponents.</p> <p>Conceivably, allowing for 'standing authority' could work within defined parameters for example, where instructions are related to particular interests, a class of future acts based on their impact on NT rights and interest or are limited to or by specific sites, rights or interests.</p> <p>Practical experience has shown that the reason general consent is often withheld is usually linked with the ability to leverage pecuniary benefit. Therefore, despite the "impact" of a proposed future act, there is a reticence to forego an opportunity to leverage greater economic benefits that may be</p> |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | LGAQ response                                                                                                                                                                                                                                                                                                                   |
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|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>achieved through high value projects, despite the impact on Native Title not being commensurate with the economic opportunity.</p> <p>Feedback from Queensland councils indicates that such a change would only benefit those NT holders who are actively engaged in decision making.</p>                                    |
| Proposal 2     | <p>The <i>Native Title Act 1993</i> should be amended to provide that:</p> <ul style="list-style-type: none"> <li>a. the Prescribed Body Corporate for a determined area has an automatic right to access all registered agreements involving any part of the relevant determination area; and</li> <li>b. when a Native Title claim is determined, the Native Title Registrar is required to identify registered agreements involving any part of the relevant determination area and provide copies to the Prescribed Body Corporate.</li> </ul> | The LGAQ has no specific feedback on this proposal.                                                                                                                                                                                                                                                                             |
| Proposal 3     | <p>Section 199C of the <i>Native Title Act 1993</i> should be amended to provide that, unless an ILUA specifies otherwise, the agreement should be removed from the Register of ILUA when:</p> <ul style="list-style-type: none"> <li>a. the relevant interest in property has expired or been surrendered;</li> <li>b. the agreement has expired or been terminated; or</li> <li>c. the agreement otherwise comes to an end.</li> </ul>                                                                                                           | The LGAQ has no concerns with the proposal to provide the Registrar with the ability to review and amend the register to remove old or expired ILUAs, subject to there being consultation, notification or opportunity to review a decision where parties may not consider the agreement to be validly terminated or at an end. |
| Proposal 4     | The <i>Native Title Act 1993</i> should be amended to require the Native Title Registrar to periodically audit the Register of ILUAs and remove agreements that have expired from the Register.                                                                                                                                                                                                                                                                                                                                                    | The LGAQ supports in-principle the introduction of the ability for the Registrar to review and amend the register to remove expired ILUAs. However, consideration should be given to principles of procedural fairness and natural justice (i.e. subject to administrative review processes).                                   |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | The LGAQ also notes there are existing mechanisms <sup>10</sup> for parties to seek dispute resolution regarding issues of implementation of agreements and that resources may be better applied to other aspects of future act reform.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Proposal 5     | The <i>Native Title Act 1993</i> should be amended to provide that the parties to an existing agreement may, by consent, seek a binding determination from the National Native Title Tribunal in relation to disputes arising under the agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>The LGAQ does not consider it necessary to provide the National Native Title Tribunal (NNTT) with the ability to make a binding determination on agreements on the basis that most agreements already contain dispute resolution provisions that may be invoked by parties in the event of a dispute.</p> <p>Further, if changes are made to content standards to include dispute resolution clauses, the parties should be free to nominate an independent arbitrator or mediator as for commercial agreements, and where one cannot be agreed, one may be appointed by the NNTT.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Proposal 6     | <p>The provisions of Part 2 Division 3 Subdivision P of the <i>Native Title Act 1993</i> that comprise the right to negotiate should be amended to create a process which operates as follows:</p> <p>a. As soon as practicable, and no later than two months after a future act attracting the right to negotiate is notified to a native title party, a proponent must provide the native title party with certain information about the proposed future act.</p> <p>b. Native title parties would be entitled to withhold their consent to the future act and communicate their objection to the doing of the future act to the government party and proponent within six months of being notified. From the time of notification, the</p> | <p>The LGAQ has concerns that if an 'impact-based' model were introduced that provides for the 'right to negotiate' in relation to local government activities, that this could severely impact infrastructure delivery.</p> <p>In assessing whether a future act may proceed, the appropriate test should be whether the act would result in unreasonable and material impact on native title rights and interests. For acts carried out by local governments, an additional public interest consideration should be incorporated, recognising that these acts are typically non-commercial and are undertaken to provide critical community infrastructure.</p> <p>Furthermore, where the NNTT determines that a future act cannot be undone, and that decision has the effect of staying or prohibiting the act for a period of up to five years, this may have serious and disproportionate consequences for councils. In such cases, a mechanism should be provided for reconsideration and review to ensure long-term service delivery and community benefit are not unduly compromised.</p> |

<sup>10</sup> *Native Title Act 1993* (Cth), s136H,

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | LGAQ response |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
|                | <p>parties must negotiate in accordance with negotiation conduct standards (see Question 7). The requirement to negotiate would be suspended if the native title party objects to the doing of the future act.</p> <p>c. If the native title party objects to the doing of the future act, the government party or proponent may apply to the National Native Title Tribunal for a determination as to whether the future act can be done (see Question 18).</p> <p>d. If the National Native Title Tribunal determines that the future act cannot be done, the native title party would not be obliged to negotiate in response to any notice of the same or a substantially similar future act in the same location until five years after the Tribunal's determination.</p> <p>e. If the National Native Title Tribunal determines that the future act can be done, the Tribunal may:</p> <ul style="list-style-type: none"> <li>• require the parties to continue negotiating in accordance with the negotiation conduct standards to seek agreement about conditions that should attach to the doing of the future act;</li> <li>• at the parties' joint request, proceed to determine the conditions (if any) that should attach to the doing of the future act; or</li> </ul> |               |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | LGAQ response                                                                                                                            |
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|                | <ul style="list-style-type: none"> <li>• if the Tribunal is of the opinion that it would be inappropriate or futile for the parties to continue negotiating, after taking into account the parties' views, proceed to determine the conditions (if any) that should attach to the doing of the future act.</li> </ul> <p>f. At any stage, the parties may jointly seek a binding determination from the National Native Title Tribunal on issues referred to the Tribunal during negotiations (see Proposal 7). The parties may also access National Native Title Tribunal facilitation services throughout agreement negotiations.</p> <p>g. If the parties reach agreement, the agreement would be formalised in the same manner as agreements presently made under s 31 of the <i>Native Title Act 1993</i>.</p> <p>h. If the parties do not reach agreement within 18 months of the future act being notified, or within nine months of the National Native Title Tribunal determining that a future act can be done following an objection, any party may apply to the National Native Title Tribunal for a determination of the conditions that should apply to the doing of the future act (see Question 19). The parties may make a joint application to the Tribunal for a determination of conditions at any time.</p> |                                                                                                                                          |
| Proposal 7     | The <i>Native Title Act 1993</i> should be amended to empower the National Native Title Tribunal to                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | The LGAQ notes the relevance of Proposal 7 to local government interests which would depend on whether the proposed 'impact-based' model |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                         | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                | determine issues referred to it by agreement of the negotiation parties.                                                                                                                                                                                                                                                                                            | introduces a 'right to negotiate' for future acts relating to matters particularly affecting local governments. It would be of concern to local government and the LGAQ, if the right to negotiate were to be extended to public facilities that are assessed to cause a 'high impact' on native title rights and interests.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Proposal 8     | Section 38(2) of the <i>Native Title Act 1993</i> should be repealed or amended to empower the National Native Title Tribunal to impose conditions on the doing of a future act which have the effect that a native title party is entitled to payments calculated by reference to the royalties, profits, or other income generated as a result of the future act. | <p>Native title rights do not exist in interests reserved to the Commonwealth or State<sup>11</sup>. Therefore, the profits or 'royalties' generated from the sale of minerals or resources is not directly related to native title rights and interest. Where those rights and interests are extinguished, the right to compensation would arise.</p> <p>The LGAQ has concerns that by empowering the NNTT to make determination in relation to the ongoing payment of royalties, it is "federalising" the State interests relating to resources.</p> <p>If the Commonwealth legislature considers that a 'shared benefits scheme' or ongoing 'royalty revenue scheme' is to be established in the future act context, the scheme should be assessed independently of minerals and resources, or other subject matter that is not related to the native title rights and interest.</p> <p>The proposal also does not consider other future acts that may not be 'high value' or produce sustained and ongoing royalties or income (such as community infrastructure) or emerging industries such as renewable energy.</p> <p>Further, the profits of commercial ventures or renewable energy projects may not bear any correlation to the loss of native title rights and interests associated with the future act.</p> |

<sup>11</sup> *Native Title Act 1993* (Cth), s212

| ALRC Proposals | Description                                                                                                                                                                                         | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                |                                                                                                                                                                                                     | Under the current proposal, there is a risk that 'classes' of native title holders emerge, where those in 'resource rich' regions benefit substantially more than those that are not.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Proposal 9     | Section 32 of the <i>Native Title Act 1993</i> should be repealed.                                                                                                                                  | The LGAQ has no specific feedback on this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Proposal 10    | The <i>Native Title Act 1993</i> should be amended to expressly provide that a government party's or proponent's compliance with procedural requirements is necessary for a future act to be valid. | <p>The LGAQ notes that this issue is particularly relevant for local governments, especially small rural and remote councils that often lack the resources, technical capability, and legal support to consistently navigate the complex procedural requirements of the future acts regime.</p> <p>Currently, under provisions such as section 24KA of the <i>Native Title Act 1994</i>, failure to comply strictly with procedural requirements does not automatically render a future act invalid, and the act is instead taken to be valid. This approach provides a degree of practical protection for local governments acting in good faith to deliver essential services where a technical non-compliance may have occurred inadvertently.</p> <p>The ALRC should consider whether a future act's invalidity should be limited only to circumstances where native title parties hold formal right to veto the act. In cases where no such veto exists, a public interest test and assessment of whether the act causes a material impact on native title rights and interests should guide any determination of validity. This would ensure that inadvertent procedural oversights do not result in disproportionate legal or operational consequences, particularly for councils acting to deliver critical infrastructure in the public interest.</p> <p>To support clarity and accountability, the LGAQ recommends establishing a registration or certification mechanism for future acts, similar to the reporting process under section 24JAA of the Act. This could involve a requirement to notify, or report acts to a central authority, such as the</p> |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                            | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                |                                                                                                                                                                                                                                                                                                                                        | Commonwealth Attorney-General's Department, to confirm the basis under which the act was undertaken to provide procedural transparency. Such a process would assist in tracking compliance, support legal clarity, and reduce the risk of disputes arising from inadvertent errors by under resourced councils.                                                                                                                                                                                                                                                           |
| Proposal 11    | All future act notices should be required to be lodged with the National Native Title Tribunal (NNTT). The NNTT should be empowered to maintain a public register of notices containing specified information about each notified future act.                                                                                          | Proposal 11 aims to improve data collection and facilitate data analysis by requiring that future act notices be provided to the NNTT. The LGAQ <u>supports</u> this proposal noting it aligns with Recommendation 1 in the LGAQ's submission on the Issues Paper calling for the ALRC review to consider the need for an expanded, centralised registry to record information on all future acts processes, provide transparency and support all stakeholders, including local government, to search for, understand and interpret any previous future acts validations. |
| Proposal 12    | Sections 24EB and 24EBA of the <i>Native Title Act 1993</i> should be amended to provide that compensation payable under an agreement is full and final for future acts that are the subject of the agreement only where the agreement expressly provides as such, and where the amounts payable under the agreement are in fact paid. | The LGAQ <u>does not support</u> Proposal 12. Whether compensation has been paid, is a contractual matter and should not be clarified through legislation. The proposal addresses the issues of contract enforcement, not legislative deficiency. If progressed, further consideration must be given to how compensation is tracked where not full and final, where liability lies in cases of proponent insolvency, and the capacity of PBCs to monitor and enforce agreement terms.                                                                                     |
| Proposal 13    | The <i>Native Title Act 1993</i> should be amended to provide a statutory entitlement to compensation for invalid future acts.                                                                                                                                                                                                         | The LGAQ notes that the proposal provided for certainty regarding compensation relating to invalid acts does not contemplate how that compensation is to be quantified. Currently, quantification of compensation has been left to common law <sup>12</sup>                                                                                                                                                                                                                                                                                                               |

<sup>12</sup> See for example *Griffith v Northern Territory of Australia* (No 3) FCA 900

| ALRC Proposals | Description                                                                                                                                                                                                                                                                       | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                |                                                                                                                                                                                                                                                                                   | <p>If the future act involves the procedure requiring section 24KA, and it is not followed, the act is not invalid. The proposed amendment suggests that procedure must be followed to validate the act, therefore the impact of this change will mean that compensation obligation will arise, even where there is not a significant impact on native title rights and interest (i.e. currently only a right to be notified or a right to comment, compared to a right to negotiate)</p> <p>In the LGAQ's view, this proposal should apply only to high impact future acts where native title parties hold a right to veto. A key concern is the absence of a centralised registry, which makes it difficult for proponents, including local governments, to demonstrate whether acts have been validly undertaken through the appropriate future act processes.</p> <p>For this reason, any changes of this nature should apply prospectively, and only once a central register has been established to track and verify compliance. The LGAQ's primary position is that this proposal should not proceed, however if adopted, should be limited in scope as outlined above.</p> |
| Proposal 14    | The <i>Native Title Act 1993</i> should be amended to provide for and establish a perpetual capital fund, overseen by the Australian Future Fund Board of Guardians, for the purposes of providing core operations funding to PBCs.                                               | The LGAQ <b><u>supports</u></b> the proposal that PBCs require additional funding and resourcing, however local government proponents should also have access to funding to manage Native Title procedures and compensation, through an appropriate agency such as the Attorney-General's office. Refer to Recommendation 9 in this submission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Proposal 15    | Native Title Representative Bodies and Native Title Service Providers should be permitted to use a portion of the funding disbursed by the National Indigenous Australians Agency to support PBCs in responding to future act notices and participating in future acts processes. | The LGAQ <b><u>supports</u></b> the proposal that PBCs require additional funding and resourcing, however local government proponents should also have access to funding to manage Native Title procedures and compensation, through an appropriate agency such as the Attorney-General's office. Refer to Recommendation 9 in this submission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| ALRC Proposals | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Proposal 16    | The Australian Government should adequately fund the National Native Title Tribunal to fulfil the functions contemplated by the reforms in this Discussion Paper, and to provide greater facilitation and mediation support to users of the native title system.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | The LGAQ <u>supports</u> the concept to fund and appropriately resource the NNTT to fulfil its obligations include those, altered by any legislative amendments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Proposal 17    | <p>Section 60AB of the <i>Native Title Act 1993</i> should be amended to:</p> <ol style="list-style-type: none"> <li>entitle registered Native Title claimants to charge fees for costs incurred for any of the purposes referred to in section 60AB of the Act;</li> <li>enable delegated legislation to prescribe a minimum scale of costs that native title parties can charge under section 60AB of the Act;</li> <li>prohibit the imposition of a cap on costs below this scale;</li> <li>impose an express obligation on a party liable to pay costs to a native title party under s 60AB of the Act to pay the fees owed to the native title party; and</li> <li>specify that fees charged by a native title party under s 60AB can be charged to the government party doing the future act, subject to the government party being able to pass through the liability to a proponent (if any).</li> </ol> | <p>The LGAQ considers this to be a reasonable proposal, provided that all relevant costs are identifiable, and State and Commonwealth funding for public infrastructure adequately covers those costs. However, the provisions within 60AB should only apply to PBCs post determination.</p> <p>All costs should be ascertainable at the commencement of a project, so that local governments can budget and source funding. Presently, State and Commonwealth funding for public infrastructure does not universally allow for native title future act compliance costs.</p> <p>The entitlement to claim the cost of performing functions should only apply to PBCs post determination and up until that time relevant payment should be held in trust.</p> <p>The LGAQ generally, agrees with the proposal of introducing a scale, but questions the need to specify minimum or maximum rates. Rather, the Commonwealth should develop reasonable rates and include the scale in regulation.</p> |

| ALRC Proposals | Description                                                                                                                                                              | LGAQ response                         |
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|                |                                                                                                                                                                          |                                       |
| Proposal 18    | The Australian Government should establish a specifically resourced First Nations advisory group to advise on implementing reforms to the <i>Native Title Act 1993</i> . | The LGAQ is neutral on this proposal. |

## Attachment 3 – LGAQ Response to Discussion Paper Questions

| ALRC Questions | Description                                                                                                                                                                                                                                 | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Question 6     | Should the <i>Native Title Act 1993</i> be amended to enable PBCs to develop management plans (subject to a registration process) that provide alternative procedures for how future acts can be validated in the relevant determined area? | <p>The LGAQ <b>does not support</b> the proposal to allow PBCs to unilaterally develop Native Title Management Plans as an alternative process for validating future acts within a determined area. Introducing a new mechanism of this nature would create an additional layer of administration, increasing bureaucracy and uncertainty for proponents without delivering meaningful benefits.</p> <p>As outlined in the response to Proposal 1, alternative procedures for managing future acts can already be facilitated through existing mechanisms, particularly Indigenous Land Use Agreements. These agreements offer a flexible and negotiated framework for both native title holders and proponents and avoid the need to legislate further complexity into the future acts regime.</p> <p>Moreover, the discussion papers suggestion that NTMPs would improve process certainty for proponents overlooks the practical realities of local government infrastructure and service delivery. In circumstances where a future act, such as a quarry permit renewal, is not consented to under an NTMP, there is no clear or timely mechanism for resolution. This poses significant risks for councils, particularly in rural and remote areas where infrastructure delivery is time sensitive and heavily reliant on access to material.</p> <p>Additionally, the potential for NTMPs to include requirements for future act payments without the agreement of government raises serious concerns. As noted in paragraph 61 of the Discussion Paper, this could encroach on the powers of the State, particularly where it relates to royalties or payments for resources that are vested in the Crown. Such arrangements may create</p> |

| ALRC Questions | Description                                                                                                                                                                                                                                                   | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                |                                                                                                                                                                                                                                                               | <p>confusion around the legal basis for payment obligations and undermine existing State frameworks governing mineral and resource management.</p> <p>For these reasons, the LGAQ considers the proposed mechanism in its current form unnecessary, as it may create operational uncertainty for local governments acting in the public interest.</p>                                                                                                      |
| Question 7     | Should the Native Title Act 1993 (Cth) be amended to provide for mandatory conduct standards applicable to negotiations and content standards for agreements, and if so, what should those standards be?                                                      | The LGAQ considers this issue too complex to be resolved through the current discussion paper process. In practice, good faith negotiation within the framework of ordinary commercial dealings generally provides adequate protections. Confidentiality is often necessary for commercial reasons, and overly prescriptive legislation may risk limiting parties' flexibility. This flexibility is important and should not be unnecessarily constrained. |
| Question 8     | Should the Native Title Act 1993 (Cth) expressly regulate ancillary agreements and other common law contracts as part of agreement-making frameworks under the future acts regime?                                                                            | The LGAQ maintains that commercial flexibility is essential, and imposing additional restrictions on the content of agreements would unnecessarily limit parties' ability to negotiate. Feedback during the consultation from LGAQ member councils indicated that it is necessary for capacity building within PBCs to ensure that all Native Title holders benefit and have a say when agreements are negotiated.                                         |
| Question 9     | Should the Native Title Act 1993 (Cth) be amended to provide a mechanism for the assignment of agreements entered into before a positive native title determination is made and which do not contain an express clause relating to succession and assignment? | The LGAQ supports an amendment to provide a mechanism allowing agreements entered into with a Native Title claim group to be automatically novated to PBC, by operation of law to the PBC nominated in the determination.                                                                                                                                                                                                                                  |
| Question 10    | Should the Native Title Act 1993 (Cth) be amended to allow parties to agreements to negotiate specified amendments without needing to undergo                                                                                                                 | The LGAQ considers that substantive amendments to an ILUA should not occur without consultation with the full native title group, given the ILUAs extra-contractual effect. While the registration process is not the core issue, the authorisation process is costly and falls on proponents. The LGAQ                                                                                                                                                    |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                         | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                | the registration process again, and if so, what types of amendments should be permissible?                                                                                                                                                                                                                                          | support changes if a fair and streamlined process can be developed that preserves the binding nature of ILUAs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Question 11    | Should the Native Title Act 1993 (Cth) be amended to provide that new agreements must contain a dispute resolution clause by which the parties agree to utilise the National Native Title Tribunal's dispute resolution services, including mediation and binding arbitration, in relation to disputes arising under the agreement? | The LGAQ does not consider that the dispute resolution should necessarily be confined to the NNTT. Similar dispute resolution provisions as for commercial agreement which allow for an independent body to nominate a mediator or arbitrator would be appropriate.                                                                                                                                                                                                                                                                                                                                                                                 |
| Question 12    | Should some terms of native title agreements be published on a publicly accessible opt-in register, with the option to redact and de-identify certain details?                                                                                                                                                                      | The LGAQ notes that this process already occurs in relation to ILUAs where only limited information, typically in the form of extracts, is made publicly available.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Question 13    | What reforms, if any, should be made in respect of agreements entered into before a native title determination is made, in recognition of the possibility that the ultimately determined native title holders may be different to the native title parties to a pre-determination agreement?                                        | <p>Under s 99C, the registrar is obliged to take it off the register. If the constitution of the group is different the agreement would need to be novated across to the new group.</p> <p>Accordingly, the consequences are that the agreement falls over, unless new constitution of groups accepts the agreement. It should be noted that while the group may be difference, the proposed agreement goes through a public notification process before it is registered.</p> <p>Any amendments should consider whether express provision should made to the effect that any future act done, while the agreement is registered remains valid.</p> |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Question 14    | <p>Should Part 2 Division 3 Subdivisions G–N of the Native Title Act 1993 (Cth) be repealed and replaced with a revised system for identifying the rights and obligations of all parties in relation to all future acts, which:</p> <ul style="list-style-type: none"> <li>a. categorises future acts according to the impact of a future act on native title rights and interests;</li> <li>b. applies to all renewals, extensions, re-grants, and the re-making of future acts;</li> <li>c. requires that multiple future acts relating to a common project be notified as a single project;</li> <li>d. provides that the categorisation determines the rights that must be afforded to native title parties and the obligations of government parties or proponents that must be discharged for the future act to be done validly; and</li> <li>e. provides an accessible avenue for native title parties to challenge the categorisation of a future act, and for such challenge to be determined by the National Native Title Tribunal?</li> </ul> | <p>The LGAQ recognises that the current system already incorporates elements of an impact-based approach. However, the LGAQ recommends that any future model which seeks to elevate native title right must include clear and adequate exclusions for acts involving the provision of public utilities, services, facilities or infrastructure. These exclusions are essential to ensuring the regime remains workable and does not unnecessarily delay or obstruct the delivery of essential services by local governments.</p> |
| Question 15    | <p>If an impact-based model contemplated by Question 14 were implemented, should there be exclusions from that model to provide tailored provisions and specific procedural requirements in relation to:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>The LGAQ highlights that if an impact-based model is to be introduced, it must include tailored exclusions and procedural pathways for acts carried out for public infrastructure and services. This is illustrated in the case studies provided in Attachment 1.</p>                                                                                                                                                                                                                                                         |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                | <p>a. infrastructure and facilities for the public (such as those presently specified in s 24KA (2) of the Native Title Act 1993 (Cth));</p> <p>b. future acts involving the compulsory acquisition of all or part of any native title rights and interests;</p> <p>c. exclusions that may currently be permitted under ss 26A–26D of the Native Title Act 1993 (Cth); and</p> <p>d. future acts proposed to be done by, or for, native title holders in their determination area?</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Question 16    | Should the Native Title Act 1993 (Cth) be amended to account for the impacts that future acts may have on native title rights and interests in areas outside of the immediate footprint of the future act?                                                                                                                                                                                                                                                                             | The LGAQ recognises that the current system already incorporates elements of an impact-based approach. However, the LGAQ recommends that any future model which seeks to elevate the native title 'right to negotiate' must include clear and adequate exclusions for acts involving the provision of public utilities, services, facilities or infrastructure. These exclusions are essential to ensure the regime remains workable and does not unnecessarily delay or obstruct the delivery of essential services by local governments. |
| Question 17    | <p>Should the Native Title Act 1993 (Cth) be amended to:</p> <p>a. exclude legislative acts that are future acts from an impact-based model as contemplated by Question 14, and apply tailored provisions and specific procedural requirements instead; and</p> <p>b. clarify that planning activities conducted under legislation (such as those related to water management) can constitute future acts?</p>                                                                         | <p>The LGAQ considers this to be a matter for individual State and Territory legislation.</p> <p>The LGAQ does not consider that the Act should be amended to specifically clarify planning activities conducted under legislation. These, processes are generally, already the subject of broader public consultation, which include the right of the public to make submissions.</p>                                                                                                                                                     |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                                              | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Question 18    | What test should be applied by the National Native Title Tribunal when determining whether a future act can be done if a native title party objects to the doing of the future act?                                                                                                                                                                      | The LGAQ recommends that any future acts assessment, particularly under an impact-based model, should be guided by a clear and objective test of whether the act results in an unreasonable and material impact on native title rights and interests. This approach would help ensure that procedural requirements are proportionate to the level of impact and provide greater certainty for both native title parties and proponents, including local governments.                                                                                                      |
| Question 19    | What criteria should guide the National Native Title Tribunal when determining the conditions (if any) that attach to the doing of a future act?                                                                                                                                                                                                         | The LGAQ recommends that the test for assessing future acts should include consideration of public interest, alongside the extent to which the act impacts native title rights and interests. Any conditions imposed as part of this assessment should be reasonable, proportionate, and directly relevant to the nature and extent of that impact.                                                                                                                                                                                                                       |
| Question 20    | Should a reformed future acts regime retain the ability for states and territories to legislate alternative procedures, subject to approval by the Commonwealth Minister, as currently permitted by ss 43 and 43A of the Native Title Act 1993 (Cth)?                                                                                                    | The LGAQ considers this to be a matter for individual State and Territory legislation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Question 21    | Should Part 2 Division 3 Subdivision F of the Native Title Act 1993 (Cth) be amended:<br><br>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;<br><br>b. for non-claimant applications made by a government party or proponent, to extend to 12 | The LGAQ does not support the need for legislative amendments to Subdivision F. As demonstrated in Attachment 1, Case Study 2, the Queensland Department of Resources maintains a policy position that a negative determination is required before a future act that would result in extinguishment can proceed. This approach is consistent with established jurisprudence, which already sets out the evidentiary requirements necessary to demonstrating the absence of native title.<br><br>Where native title is not apparent or has not been formally determined, a |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                                                                                | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|                | <p>months the timeframe in which a Native Title claimant application can be lodged in response;</p> <p>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</p> <p>d. in some other way?</p> | <p>process must still exist to confirm that native title does not exist before an extinguishing act is carried out. However, in the Queensland context, the LGAQ is not aware of any instances where a future act granted under s 24FA of the <i>Native Title Act</i> has led to the extinguishment of native title. Accordingly, existing legal frameworks and administrative practice are considered sufficient.</p>        |
| Question 22    | If the Native Title Act 1993 (Cth) is amended to expressly provide that non-compliance with procedural obligations would result in a future act being invalid, should the Act expressly address the consequences of invalidity?                                                                                                                                                            | The LGAQ notes that the response to this depends on the nature of the procedural rights. If the rights do not include a veto, then a failure to follow procedure may have limited impact on native title, as reflected in the current regime. However, if the procedural rights include a veto, then compliance is critical and failure to follow process should have consequences.                                           |
| Question 23    | Should the Native Title Act 1993 ), or the Native Title (Notices) Determination 2024 (Cth), be amended to prescribe in more detail the information that should be included in a future act notice, and if so, what information or what additional information should be prescribed?                                                                                                        | The LGAQ recommends that future acts assessment processes should reasonably require sufficient detail to identify the nature and extent of the act's impact on native title rights and interests.                                                                                                                                                                                                                             |
| Question 24    | Should the Native Title Act 1993 (Cth) be amended to provide that for specified future acts, an amount which may be known as a 'future act payment' is payable to the relevant native title party prior to or contemporaneously with the doing of a future act:                                                                                                                            | The LGAQ does not support the proposed amendment as drafted. Any future act payment should only be made where native title rights and interests have been legally established, and where appropriate, such payments should be held in a trust until that time. The proposal risks undermining established principles by implying a right to compensation prior to a determination. Compensation frameworks should reflect the |

| ALRC Questions | Description                                                                                                                                                                                                                                                                                                                                                                                             | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                               |
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|                | <p>a. as agreed between the native title party and relevant government party or proponent;</p> <p>b. in accordance with a determination of the National Native Title Tribunal where a matter is before the Tribunal;</p> <p>c. in accordance with an amount or formula prescribed by regulations made under the Native Title Act 1993 (Cth); or</p> <p>d. in accordance with an alternative method?</p> | actual impact on native title rights and interests, not the commercial profitability of the proponent or project.                                                                                                                                                                                                                                                                                           |
| Question 25    | How should 'future act payments' interact with compensation that is payable under Part 2 Division 5 of the Native Title Act 1993 (Cth)?                                                                                                                                                                                                                                                                 | <p>The LGAQ recommends that compensation is equivalent, to Part 2, Division 5 including for example:</p> <ul style="list-style-type: none"> <li>a. Limits to compensation not to exceed what would be payable if the interest were compulsorily acquired<sup>13</sup>;</li> <li>b. No multiple compensation for the same act<sup>14</sup>; and</li> <li>c. Just terms compensation<sup>15</sup>.</li> </ul> |
| Question 26    | Should the Native Title Act 1993 (Cth) be amended to provide for a form of agreement, which is not an Indigenous Land Use Agreement, capable of recording the terms of, and basis for, a future act payment and compensation payment for future acts?                                                                                                                                                   | The LGAQ would support the creation of a new form of agreement to record future act and compensation payments, provided it carries the same binding effect as an ILUA. Any such agreement must be capable of binding parties beyond those which are named similar to the "extra contractual effect" of an ILUA.                                                                                             |

<sup>13</sup> s51A Native Title Act 1993 (Cth)

<sup>14</sup> s49 Native Title Act 1993 (Cth)

<sup>15</sup> s53 Native title Act 1993 (Cth)

| ALRC Questions | Description                                                                                                                                                                                                   | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| Question 27    | Should the <i>Native Title Act 1993</i> be amended to expressly address the awarding of costs in Federal Court of Australia proceedings relating to the future acts regime, and if so, how?                   | <p>The LGAQ understands that Native Title has been treated as a ‘no costs’ jurisdiction, but that there would be benefits in making amendments to the Act to explicitly set out the circumstances when costs may apply.</p> <p>Given the public interest in the subject matter, in Native Title proceedings, each party bears their own costs, save for circumstance where there is an abuse of process.</p> <p>The proposed amendments could mirror a similar regime in the <i>Planning and Environment Court Act 2016 (Qld)</i> which provides that, subject to proceeding started for an improper purpose, each part is to bear their own costs.<sup>16</sup></p>                                                                                                                                                                                                                                                                        |
| Question 28    | Should the <i>Native Title Act 1993</i> 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? | <p>The LGAQ supports appropriate measures to manage cultural heritage impacts of future acts but recommends any amendments to the Native Title Act align with existing state and territory cultural heritage laws to avoid duplication. The framework should be fair, workable, and recognise that cultural heritage and native title responsibilities may not always rest with the same entity. Any role given to PBCs must consider variations in group structure, overlapping interest, and the potential to conflict, particularly where cultural heritage extends beyond native title areas or involves economic opportunities.</p> <p>The LGAQ supports appropriate measures to manage cultural heritage impacts of future acts, however, notes the interaction between the protection of Aboriginal Cultural heritage and Native Title rights is complex and difficult to adequately address in the Discussion Paper submission.</p> |

<sup>16</sup> Part 6, *Planning and Environment Court Act 2016 (Qld)*

| ALRC Questions | Description | LGAQ response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                |             | <p>The LGAQ notes some important considerations including:</p> <ul style="list-style-type: none"> <li>a. Relevant Queensland legislation<sup>17</sup> already provides a framework for the protection of Aboriginal and Torres Strait Islander Cultural Heritage, by imposing a duty of care on proponents undertaking activities that may impact cultural heritage.</li> <li>b. The activities undertaken by proponents are not necessary future act as cultural heritage applies irrespective of the existing of Native Title.</li> <li>c. Areas outside of native title determination areas may overlap with multiple traditional owner groups claiming to have a cultural heritage interest over the land, so conflict can arise as to who is the appropriate party.</li> <li>d. Understanding that cultural heritage and native title interest may vary within a native title group. In some instances, separate Aboriginal corporations may be established for dealing with particular cultural heritage matters.</li> <li>e. Economic opportunities arising from projects where proponents are seeking to discharge their duty of care.</li> <li>f. Obtaining Cultural Heritage Clearances under state legislation and the negotiation of fees for service and other payments relating to cultural heritage consents, can interfere with efficient progress future act processes, even where the right to negotiate may not exist.</li> </ul> |

<sup>17</sup>

Aboriginal Cultural Heritage Act 2003 (Qld); Torres Strait Islander Cultural Heritage Act 2003 (Qld)