

Submission on ALRC Review of the Future Acts Regime Discussion Paper

1. Background

The Bureau of Meteorology (**Bureau**) operates under the *Meteorology Act 1955* (Cth) and *Water Act 2007* (Cth) and is:

- an "Executive Agency" pursuant to the *Public Service Act 1999* (Cth); and
- a non-corporate Commonwealth entity pursuant to the *Public Governance, Performance and Accountability Act 2013* (Cth).

The Bureau sits within the Department of Climate Change, Energy, the Environment and Water, and reports to the Minister for the Environment and Water.

The Bureau delivers weather, water, climate and ocean services across Australia, which assist in government, various industries and communities. Many key Australian sectors benefit from its service including emergency management, agriculture, aviation, land and marine transport, energy and resource operations, climate policy, water management, defence, and foreign affairs.

The Bureau welcomes the opportunity to comment on the Australian Law Reform Commission's (**ALRC**) Review into the Future Act Regime (**Review**).

2. Bureau Projects and Native Title

The Bureau undertakes future acts with respect to its projects and infrastructure across Australia. The Bureau takes a thorough and respectful approach to ensuring it complies with its native title and Aboriginal cultural heritage obligations.

Currently under the *Native Title Act 1993* (Cth) (Native Title Act), the Bureau undertakes future acts required for its infrastructure pursuant to Subdivision K (Facilities for services to the public). Section 24KA(2)(la) covers 'automatic weather stations' and was introduced into the Native Title Act specifically for the Bureau's benefit.

The Explanatory Memorandum to the *Native Title Amendment (Technical Amendments) Bill 2007* notes:

1.107 *Automatic weather stations, presently operated by or on behalf of the Bureau of Meteorology, are provided by the Government for the benefit of the general public. They are particularly important for rural communities. It is presently unclear whether automatic weather stations would fall within subsection 24KA(2). To avoid doubt, item 34 would specifically provide that automatic weather stations are facilities for services to the public for the purpose of Subdivision K.*

3. Submissions

The following submissions do not comprehensively respond to every proposal or question in the ALRC's '*Review of the Future Acts Regime: Discussion Paper (2025)*' (**Discussion Paper**). The submissions focus on proposals that directly impact the Bureau or questions where the Bureau considers it has some useful insight. The Bureau thanks the ALRC for

considering these submissions in its Review and welcomes further consultation in respect of these issues.

Question 6 – Native Title Management Plans

Question 6 asks if native title holders, through their respective Prescribed Body Corporate, should be able to develop management plans that provide alternative procedures for validating future acts in their determination area.

The Bureau acknowledges the importance of self-determination for native title holders and the role that a Native Title Management Plan (**NTMP**) could play in achieving this. It is also acknowledged that in the circumstances where an indigenous land use agreement (**ILUA**) would have ordinarily been required, a NTMP could be of assistance for a project proponent to understand at the outset the aspirations and wishes of the native title party with respect to projects on their land, which could be useful in terms of preliminary project planning and development.

NTMP process

The Bureau considers that land users should be consulted, or provided an opportunity to comment, when the native title holders are developing a NTMP. In this regard, the right to be consulted or to provide comments could be limited to government or statutory bodies with responsibilities in the area and to other land users with an interest in the relevant area, using a similar test as is currently used for joining native title claims under section 84 of the Native Title Act.

Additionally, the Bureau considers the National Native Title Tribunal (**NNTT**) should play a role in the approval and registration of NTMPs, including by undertaking a thorough review of content of NTMPs. The Bureau considers it of particular importance that the NNTT ensure an NTMP has processes that are reasonable and practicable as they apply to critical public infrastructure. The NNTT could also be tasked with consideration of various comments from land users with respect to the NTMP when deciding whether to approve or register it over land. In this respect, the ALRC may also consider recommending the development of a guideline for NTMPs.

In terms of critical public infrastructure (or 'facilities for services to the public' that are currently covered under s24KA(2) of the Native Title Act), unless separately provided for under any new future act regime, the ALRC may consider a requirement for NTMPs to provide for a more streamlined future act process for certain projects that meet a public interest test.

To the extent that a NTMP may indicate areas where native title holders do not want future acts to occur, or where certain types of future acts should not occur, the Bureau suggests that there remain the ability for parties to reach negotiated outcomes notwithstanding the NTMP (i.e. the ability for a native title party to change or amend these designations – perhaps subject to conditions – once a proponent presents a project or future act to the native title holders). This ability may be limited to future acts associated with critical public infrastructure. The Bureau recognises the importance of protecting cultural heritage and considers that there may be situations where a proponent and the native title holders can reach a mutually agreeable position regarding a future act and the management of cultural heritage.

Question 14 – Revised 'Future Act' regime

Question 14 suggests replacing Part 2 Division 3 Subdivisions G to N of the Native Title Act with a system that identifies the rights and obligations of all parties in relation to future acts based on the impact to native title rights and interests of the future act. The Discussion Paper identifies two categories – a lower impact category attracting a right to consultation (**Right to**

Consultation), and a higher impact category attracting a right to negotiate (**Right to Negotiate**).

Based on the descriptions of these categories by the ALRC, the Bureau's infrastructure, such as automatic weather stations, which are currently validated under Subdivision K, would likely fall within the Right to Consultation on the basis that the infrastructure covers a limited geographic area and is relatively small-scale. Of course, the appropriate category will ultimately depend on the type of infrastructure and any eventual legislated description of the categories.

The Bureau suggests that future acts that are currently validated under s 24KA(2) of the Native Title Act, or, at least, those section 24KA future acts associated with lower impact projects, such as an automatic weather station, should attract the Right to Consultation.

The Bureau agrees that transitional provisions may be required and suggests that future acts currently validated under Subdivision K remain valid notwithstanding the outcome of the Review and any subsequent legislative amendment.

Question 15 – Potential exclusions in a reformed future acts regime

Question 15 outlines that the revised future acts regime would introduce a requirement for either consultation or negotiation for future acts that can currently be done validly under section 24KA of the Native Title Act. Currently, procedural rights under section 24KA are often limited to a right to notification and comment.

The Bureau's weather services are widely relied on across Australia, including for many critical industries and sectors. As noted above in response to Question 14, the Bureau considers this infrastructure would likely fall within the Right to Consultation. However, if the Right to Negotiate were to apply, and noting all the circumstances, the Bureau asks the ALRC to consider an exclusion for critical public infrastructure due to the public interest requirements in that infrastructure and the nature of services provided. The exclusion could apply to those future acts currently validated under section 24KA or, in the alternative, to projects that meet a certain public interest threshold. In particular, the Bureau is concerned to ensure that future acts associated with the construction, operation, use, maintenance or repair of its automatic weather stations can be undertaken validly.

Where future acts fall within the 'public infrastructure' exclusion, the Bureau suggests that the procedural rights could be a Right to Consultation, regardless of the impact of the future act.

Proposal 6 – Reformed Right to Negotiate

Proposal 6 outlines a proposed new Right to Negotiate process. The Bureau welcomes an agreement-making process with structure, statutory timeframes and ability to seek assistance from the NNTT. However, if a new Right to Negotiate process were to apply to the Bureau's automatic weather stations (notwithstanding the Bureau's comments above in relation to Questions 14 and 15), the proposed new regime would significantly impact this infrastructure.

It is worth highlighting that the construction of an automatic weather station is a relatively quick and straightforward process. A requirement to undertake lengthy negotiations would significantly impact the efficiency of the Bureau's operations and would not be feasible for this type of infrastructure.

That said, the Bureau understands the value of negotiation and considers that, in many circumstances, the timeframes described in the Discussion Paper will allow for meaningful negotiation and an agreement between the parties. The Bureau makes the following

observations with respect to Proposal 6, and notes that these comments are provided in the alternative to the Bureau's proposals under Questions 14 and 15:

- The revised Right to Negotiate process would allow for an objection to be made within 6 months after a proponent provides the native title party with information about the future act. The Bureau acknowledges that it is important to provide native title parties with a right to object to certain things occurring on their land. However, a 6 month objection period would create substantial project uncertainty for this period and would impact the Bureau's ability to progress project planning in the meantime. The Bureau submits that the ALRC provide a shorter objection timeframe for future acts that meet a certain public interest threshold test, like the future acts currently provided for under s24KA(2) of the Native Title Act.
- The revised Right to Negotiate process would allow for the native title party to object to, or withhold their consent to, the doing of a future act. In these circumstances, the proponent may apply to the NNTT for a determination of whether the act can be done. If the NNTT were to determine the act cannot be done, the native title party would not be obliged to negotiate with respect to the same or a substantially similar future act in the same location for a period of five years. The Bureau considers that a five year pause could have a significant impact on the delivery of the Bureau's weather services, particularly if another location for an automatic weather station, or other infrastructure, is not viable. To that end, the Bureau submits that consideration should be given by the ALRC to an exclusion for critical public infrastructure.
- The revised Right to Negotiate proposes an 18 month negotiation period before a party can make a referral to the NNTT (noting that joint referrals can be made earlier). The Bureau acknowledges the need for a fair and reasonable timeframe to allow for meaningful negotiation. Although the Bureau suggests that an automatic weather station should fall within the Right to Consultation, if the Right to Negotiate were to apply, the Bureau submits that an 18 month negotiation period for this kind of infrastructure would not be feasible. The ALRC may wish to consider an expedited process for public infrastructure or, at least, for lower impact public infrastructure such as an automatic weather station.

Separately, it is noted that the Bureau has proposed that critical public infrastructure attracts a Right to Consultation rather than a Right to Negotiation – if this proposal were accepted, the issue of objections would not arise as this only occurs in the Right to Negotiate process.

Question 24 – Compensation and other payments

Question 24 suggests that compensation for specified future acts would be payable to the relevant native title party prior to or contemporaneously with the doing of the future act.

The Bureau is not currently funded to provide native title compensation in this way.

If this change were to be implemented, there would need to be consideration of funding regimes supported by State and Federal governments to facilitate the Bureau (and other Government agencies) to pay compensation.