

SUBMISSION TO THE REVIEW OF THE FUTURE ACTS REGIME DISCUSSION PAPER

GREAT BARRIER REEF
MARINE PARK AUTHORITY

24 JULY 2025



Executive Summary

The Great Barrier Reef Marine Park Authority (the Reef Authority) welcomes the opportunity to contribute to the Australian Law Reform Commission's Discussion Paper on options for reform to the future acts regime within the *Native Title Act 1993* (the NTA). The Reef Authority has provided responses in this document based on its use of the current Future Act Notification (FAN) process in the Great Barrier Reef Marine Park (the Marine Park) permit application process, including the feedback it receives from both Traditional Owners and permit holders. While the Reef Authority has identified areas where there are resourcing implications for Traditional Owners, permit holders and the Reef Authority, the Reef Authority is committed to reforms that enable the future acts regime to operate fairly, effectively, and efficiently.

In considering these options, this submission seeks to highlight that the Marine Park context is vastly different to terrestrial acts, like mining, broad scale clearing, and port development. These differences should be acknowledged and accounted for in these reforms.

The reform options outlined will require the Reef Authority to more proactively engage with native title holders who currently, or will be, recognised to hold native title sea country estates within the Marine Park. The practical implications of this include an increase in administrative and/or financial responsibilities on the Reef Authority to comply with the proposed amendments, especially if the Reef Authority's legislative planning and management instruments are classed as 'future acts'. The proposed impact-based model and re-categorisation of future acts may increase the permissions assessment process timelines, which in turn would affect applicants' ability to undertake their activities in the Marine Park, including tourism operators, researchers and education programs.

The Reef Authority also recognises the opportunity these reforms provide to proactively streamline clearer future act assessment processes and integrate cultural heritage protection within the Marine Park to a broader cultural heritage protection regime. However, it is noted that any 'rebalancing' must also take into account the existing powers and statutory functions of the Reef Authority and not impose an additional administrative burden beyond available resources and capability.

Assuming the Discussion Paper's reform options are recommended in the final report and native title sea country estates are expanded throughout the Marine Park, the Reef Authority will need to substantially adjust its permitting practices. The Reef Authority therefore wishes to stay engaged in this reform process to support better alignment between the intention of the future acts regime and practical realities of operating within it.

About the Reef Authority

As a statutory agency and non-corporate Commonwealth entity, the Reef Authority is responsible for managing the Great Barrier Reef for its long-term protection and conservation of the environment, biodiversity, and heritage values of the Great Barrier Reef Region under the *Great Barrier Reef Marine Park Act 1975* (the Marine Park Act).

The Marine Park Act also *facilitates partnership with traditional owners in management of the marine resources*. The Reef Authority uses tools such as zoning plans, plans of management, permissions, formal agreements and site management arrangements, which are supported by management approaches that include education and awareness, environmental impact assessments, monitoring, stewardship programs, habitat protection and rehabilitation, compliance and enforcement.

Compliance with NTA and future act regime

In complying with the NTA and future act regime, the Reef Authority issues FANs, where required under the NTA, prior to granting any permit (which can contain one or more permissions) for activities within the Marine Park as required by the Great Barrier Reef Marine Park Zoning Plan 2003 (the Zoning Plan). FANs are issued for all new permit decisions, including continuations (renewals). Many are regular and routine activities that are established in the Marine Park. These permissions are mostly assessed through a joint permissions system in collaboration with the Queensland Government and a joint permit is granted. The Reef Authority administers approximately 1500 permits with over 7200 permissions in the 344,400 km² Marine Park.

The Reef Authority can also provide authorisation under Part 5 of the Zoning Plan for certain activities to occur, where they otherwise would require a permit. For some of these activities, FANs are required.

Each permit application is assessed under one of five assessment approaches based on its complexity and risk level. Elements considered when assigning an assessment approach include variety of activities, impacts on Marine Park values, impact on other users, zones/locations proposed for access, activity scale, duration and public interest.

The routine assessment approach are fully standardised permits whereby the Reef Authority has conducted a risk assessment for all the permitted activities that have been determined as low risk, and standard permit conditions have been developed to protect the Marine Park from potential impacts. This provides a more efficient application processing time (service charter of 25 business days).

For routine permits, the Reef Authority currently notifies the notice recipients that it is proposing to grant a number of permits of that class in relation to the defined area of water. The Reef Authority currently satisfies the notice requirement by describing the act or class of acts by the term applicable to the act or class of acts that is used in the Marine Park Act and Zoning Plan.

For these low risk and low impact standard activities that are routinely assessed, the inability to continue to notify by way of class notification would significantly increase the quantity of FANs received by notifiable bodies, increasing their administrative burden and significantly increase the assessment period for routine permits.

Response to the Discussion Paper

Question 6

Should the *Native Title Act 1993* (Cth) be amended to enable Prescribed Bodies Corporate 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?

There are potential positive and negatives for the Reef Authority in relation to the introduction of Native Title Management Plans (NTMPs). The watch points of implementing such plans are the addition of another layer of administrative effort and uncertainty in an already crowded space. This is particular so if an NTMP could operate as a de facto right of veto over certain activities in the Marine Park.

If a Prescribed Body Corporate (PBC) registers a NTMP for sea country within the Marine Park, the NTMP could provide the Reef Authority with clear, pre-agreed procedures for certain future acts

that are not in contravention of existing Marine Park legislation. NTMPs could assist in streamlining the processing time of permit approvals and management activities by setting out the expectations of native title holders upfront. This has the potential to reduce negotiation times for routine or low-impact Marine Park activities.

However, whilst NTMPs will operate effectively as an overlay on their identified geographical areas, they are contemplated as being formulated by native title parties with little, if any, input by “external” parties. The comment (at paragraph 57 of the Discussion Paper) that “NTMPs would not require a government party’s agreement. The registration process for an NTMP may, nonetheless, incorporate an avenue for input from government parties when an NTMP is developed.” This approach has practical implication for the management of the Marine Park and needs to be further assessed to ensure it is workable in practice.

For example, the indicative process (Figure 3 at paragraph 65 of the Discussion Paper) seems to contemplate referral of a copy of a proposed NTMP to a “relevant state or territory” (of which the Commonwealth as represented by the Reef Authority is, of course, neither) and even then seems to entitle such a state or territory to make representations, to the proposed administering body (the National Native Title Tribunal (NNTT)), only in respect of the proposed NTMP’s compliance with registration criteria, rather than with the Reef Authority’s statutory framework and responsibilities.

Thus, community members, and even government entities (such as the Reef Authority), are contemplated as being bound by those NTMPs regardless of having little input into them – either at the time of formulation or at the time of implementation. Given the Reef Authority’s operating environment, its statutory powers and functions, and its over-riding role as regulator and manager of the Marine Park, the notion of an NTMP (as presented in the Discussion Paper) is inconsistent with the Reef Authority obligations and contrary to the objects of the Marine Park Act and its subordinate legislation (in their current state).

If the reform options to introduce NTMPs are recommended in the Final paper, the Reef Authority recommends the following considerations:

- PBCs are provided adequate funding to develop and update NTMPs as required.
- An NTMP operating in the Marine Park should: a) operate consistently with, not subordinately to, the Marine Park’s existing management framework; b) be formulated in conjunction with the Reef Authority; and c) the Reef Authority (or other relevant agency) should be funded and resourced accordingly.

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 Reef Authority suggests consideration of the following points in the development of any standards:

- Mandatory standards should not be overly prescriptive and need to be operationally realistic and achievable.
- Standards need to take into account the variations in capacity and aspirations of Traditional Owner groups throughout Australia and allow for flexibility.

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 registration process again, and if so, what types of amendments should be permissible?

Greater flexibility in amending existing agreements without full re-registration could make it easier for the Reef Authority to adapt management arrangements or permit conditions in response to new information or changing needs.

Question 14

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:

- (a) categorises future acts according to the impact of a future act on native title rights and interests;
- (b) applies to all renewals, extensions, re-grants, and the re-making of future acts;
- (c) requires that multiple future acts relating to a common project be notified as a single project;
- (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
- (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?

The Reef Authority has the following responses to Question 14:

- a) The proposed impact-based model would provide greater certainty for the Reef Authority when planning and managing new or evolving marine industries by focusing on the actual impact rather than trying to fix them into the current statutory categories (noting that some of the following examples may not impact the Marine Park, e.g. offshore renewable energy, new aquaculture techniques, marine tourism innovations). The tiered approach would assist the Reef Authority in proactively planning and assessing permits by identifying impactful acts that align with the Marine Park legislation.

The adoption of an impact-based model, whilst providing ongoing clarity, will result in an increased administrative burden on the Reef Authority in determining the impact of every proposed future act (permits, management actions, zoning changes) on native title rights and interests to determine if the act falls under Category A or B. If the proposal is adopted in full, native title parties would gain the right to challenge the Reef Authority's categorisation of impactful future acts in the NNTT which could lead to substantially larger processing times and require the Reef Authority to provide an increased number of detailed Statements of Reasons concerning its permit assessments. For Category A acts, the right to consultation requirements would be more rigorous than the current "right to comment" under existing legislation. The Reef Authority would be obligated to provide sufficient information, genuinely consider views, and respond, which demands more resources and structured engagement with native title stakeholders.

To reduce resource implications on both the Reef Authority and the PBCs we recommend considering whether future acts which, in the main, meet all the criteria of Category A except for the scale and geographical area, could still be considered under Category A. This is because in the new tiered approach the majority of future acts proposed to occur in the Marine Parks would fall into Category B — noting that only one of the factors need to be met to fall into this category and most permit applications are not small-scale, or cover a discrete or limited geographical area, despite meeting the other criteria for the relevant category.

- b) To reduce resource implications more broadly and to assist PBCs in prioritising allocating time and resources, the Reef Authority recommends considering whether all renewals, extensions, and re-grants should be treated as “right to comment”.
- c) An advantage of requiring multiple future acts relating to a common project to be notified as a single project would be the reduced resource implications. However, this requirement should not prevent additional future acts relating to a common project being added at a later phase and a separate notification occurring.
- d) No comment
- e) No comment

Question 15

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:

- (a) infrastructure and facilities for the public (such as those presently specified in s 24KA(2) of the *Native Title Act 1993* (Cth));
- (b) future acts involving the compulsory acquisition of all or part of any native title rights and interests;
- (c) exclusions that may currently be permitted under ss 26A–26D of the *Native Title Act 1993* (Cth); and
- (d) future acts proposed to be done by, or for, native title holders in their determination area?

The Reef Authority has the following responses to Question 15:

- a) Marine Park infrastructure and facilities for the public should be considered under the same impact-based model as other future acts unless facilities and infrastructure are for the purpose of public safety or navigation in the case of non-exclusive native title determination; in these cases, a “right to be comment” should be applied.
- b) No comment
- c) No comment
- d) To reduce resource strain and streamline processes, future acts proposed to be done by, or for, native title holders solely in their determination area should not be required to be subjected to FANs, if a declaration is signed by the PBC noting they are supportive of that act. If the immediate footprint of the future act includes areas outside of that native title holder’s determination, a FAN should be issued, where applicable.

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?

If adopted, the Reef Authority would need to account for impacts on native title rights outside the immediate physical footprint of an act when determining who should receive a FAN. This would greatly expand the scope of the Reef Authority’s FANs and significantly increase resource requirements for both the Reef Authority and the PBCs. It may, in fact, cause the Reef Authority to operate outside of its jurisdiction.

It is difficult to gauge to what extent the proposed amendment would affect the Reef Authority in its day-to-day operations. Presumably, upstream future act approvals may have a propensity to affect the exercise of native title rights in the Marine Park, but those approvals would typically be provided by another native title group/agency who would be obliged to consider the effect of that

approval on the downstream areas. In the case of approvals in one area of the Marine Park having an effect on other areas of the Marine Park, or outside the Marine Park, typically the Reef Authority would be required already to take into account under provisions like s103(g)-(i) of the *Great Barrier Reef Marine Park Regulations 2019*.

If this proposed amendment is made, exemptions and guidance should be included in the amendment and the differences in the impacts of the future acts on marine and terrestrial environments considered.

Question 17

Should the *Native Title Act 1993 (Cth)* be amended to: 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 b. clarify that planning activities conducted under legislation (such as those related to water management) can constitute future acts?

If the Reef Authority's strategic management plans (e.g. zoning plans, plans of management) which are legislative instruments, are explicitly classified as "future acts" and subject to the proposed future acts regime, it would require significant new engagement processes at a high level of planning, rather than just at the individual permit stage. This could fundamentally change how the Reef Authority develops its management plans in unforeseeable ways.

Question 18 and Proposal 6

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?

For Category B acts, the proposed process gives native title parties a formal "opportunity to object."

In the Marine Park context, if an objection is made, the Reef Authority (or the proponent) would need to apply to the National Native Title Tribunal (NNTT), and the NNTT would determine if the act can proceed. This formal arbitration process is likely to be time-consuming and resource intensive, with potential for the Reef Authority to be unable to proceed with an act if the NNTT upholds an objection. Such a delay could occur even in circumstances where the act is demonstrably beneficial to the values of the Marine Park, in a significant and environmentally-responsible way, to the health and good management of the Marine Park.

One of the secondary objectives of the Marine Park Act is to allow ecologically sustainable use of the Great Barrier Reef Region for purposes including the following: (i) public enjoyment and appreciation; (ii) public education about and understanding of the Region; (iii) recreational, economic and cultural activities; (iv) research in relation to the natural, social, economic and cultural systems and value of the Great Barrier Reef Region.

The proposed impact-based model and re-categorisation of future acts may cause the majority of acts requested to be undertaken in the Marine Park to fall into Category B due to the large geographical footprint of these acts. These proposed changes may substantially increase the permissions assessment process timelines and the certainty of activities, including tourism, researchers and education programs. This should be considered in the context of the management of geographically large marine environments.

Question 22 and Proposal 10

If the *Native Title Act 1993 (Cth)* is amended to expressly provide that noncompliance with procedural obligations would result in a future act being invalid, should the Act expressly address the consequences of invalidity?

Making compliance with procedural requirements necessary for validity means the Reef Authority's future acts would be invalid if procedures are not followed correctly. This significantly increases the legal risk for the Reef Authority and requires robust internal processes to ensure meticulous compliance. The implications on permit holders and businesses needs careful consideration.

Question 23 and Proposal 11

Should the *Native Title Act 1993 (Cth)*, 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 requirement to lodge all future act notices with the NNTT for a public register would increase the Reef Authority's administrative burden for record-keeping and data provision, though this proposed amendment offers an opportunity for the Reef Authority to track its activities with greater transparency.

The Reef Authority's preference is to continue to notify by way of class notifications for standard activities.

Financial and Resourcing Implications

Proposals 14, 15, & 16 – Increased resourcing for Native Title Parties

While not a direct cost to the Reef Authority, better-resourced PBCs and other native title parties may lead to more engagement and more robust demands on Reef Authority resources during negotiations. The Reef Authority may need to meet expectations on their own resourcing to match the capability of better funded native title parties. The flow on implications to government entities and businesses should be considered.

Proposal 17

Section 60AB of the *Native Title Act 1993 (Cth)* should be amended to:

- a) entitle registered native title claimants to charge fees for costs incurred for any of the purposes referred to in s 60AB of the Act;
- b) enable delegated legislation to prescribe a minimum scale of costs that native title parties can charge under s 60AB of the Act;
- c) prohibit the imposition of a cap on costs below this scale;
- d) 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
- e) 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).

The changes would potentially alter the financial implications for the Reef Authority and permit holders. In considering this, the Reef Authority highlights the following considerations.

The proposed amendment, on its face, is reasonable. However, in a Marine Park context, the implications of cost recovery measures for native title parties will have significant consequences. A portion of Marine Park permissions and Part 5 actions under the Zoning Plan are relatively low-impact activities carried out by small business, governments or not-for-profit organisations. The Marine Park context is vastly different to terrestrial acts, like mining, broad-scale clearing, and port development.

Under the current Marine Park legislation only partial cost recovery is applied to commercial applications. All non-commercial activities, such as research, are not cost-recovered (that is, no permit application fees apply). The financial burden on the Reef Authority would increase if the Reef Authority's legislation was not augmented to allow for cost recovery from non-commercial applications — including some management actions undertaken by other Commonwealth parties or the State.

Proposal 13

The *Native Title Act 1993* (Cth) should be amended to provide a statutory entitlement to compensation for invalid future acts.

If the Reef Authority fails to comply with future acts procedures, there would be a statutory entitlement to compensation for invalid future acts. This poses a direct financial risk to the Reef Authority specifically and the Commonwealth generally. This should be considered in terms of volume and type of activities relevant to geographically large marine environments.

Further to our response to proposal 17 above, the Marine Park context is vastly different to terrestrial acts, like mining, broad-scale clearing, and port development. Any reform of the NTA that aligns compensation to the proposed tiered approach to implementing FANs would be considered a more appropriate approach. If the reform proposes to impose a burden directly on the proponent, again, cost recovery is applied only to commercial applications. All non-commercial activities, such as research, are not cost-recovered (that is, no application fees apply). Low impact proponents in the Marine Park are primarily small businesses, governments or not-for-profit organisations.

Relationship and Governance

Proposal 18

The Australian Government should establish a specifically resourced First Nations advisory group to advise on implementing reforms to the *Native Title Act 1993* (Cth)

If this occurs, consideration should be given to how this will operate under current legislation, and any potential impacts on the current legislative suites of different Commonwealth entities.

Question 28

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

Proposals to integrate cultural heritage management more directly into the NTA (for example, requiring consent for significant impacts on culturally sensitive sites or allowing agreements to discharge all legal obligations) would affect the Reef Authority's role in cultural heritage protection within the Marine Park. However, this reform could be an opportunity to simplify current heritage laws for Aboriginal and Torres Strait Islander cultural heritage in determination areas.

