Submission to the Australian Law Reform Commission (ALRC): Review of the Future Acts Regime

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Date: 24 July 2025

This entire reform process is fundamentally biased towards and in favour of Native Title parties. The proposed changes, as outlined in the ALRC's discussion paper, appear to cater primarily to their interests, while significantly disadvantaged small-scale prospectors, farmers, pastoralists, and tenement holders. I believe these reforms are being pushed to create more income opportunities for native title bodies and associated legal representatives, not to improve heritage protection or administrative fairness.

1. The Consultation Process Is Deeply Flawed

Despite requesting clarification on how the ALRC has engaged stakeholders, the Commission's response only provides generalities. There is no evidence that prospectors, farmers, or small tenement holders have been meaningfully included in the consultation process.

Many of us work remotely and may not be actively online. The Department of Mines has our physical addresses, why weren't we contacted directly? We deserve to have our voices heard. You cannot make fair or balanced reform recommendations without engaging those who operate on the ground.

2. A Biased Framing of Reform

The ideas presented in the webinar were not balanced. They clearly favour the Native Title parties and legal representatives who benefit financially from increased regulation and objection processes. These reforms appear designed to:

- Increase income for native title groups and lawyers
- Make small-scale mining operations financially unsustainable
- Push out grassroots prospectors in favour of big companies with deep pockets

3. Heritage Claims Often Lack Evidence

I've personally witnessed inconsistencies and manipulations during heritage surveys:

- A surveyor once claimed a stone was a spear-sharpening tool and threw it away immediately after. He then followed up with the statement "I can say whatever I want, and it controls what you can do here."

Another example of questionable heritage designation: I was once involved in a Native Title survey where Rio Tinto had elders walk the ground of a proposed railway line. I mentioned, “I hope they don’t put the railway through where my camp is,” and the elder responded, “No worries brother, you just tell us wherever you don’t want them to put it, and I’ll just tell them it’s a sacred site.” This clearly demonstrates how arbitrary and unverified these claims can sometimes be. There are no consequences for false or selective heritage claims.

This isn’t rigorous heritage protection! It’s selective enforcement, often driven by the potential value of the land. Higher-value tenements attract more objections, not because of heritage significance, but because of potential money to be made.

4. Heritage Surveys Are Unaffordable and Exploitative

We were recently asked to pay $30,000 for a heritage survey on a 3-hectare lease that had already been worked for the last 100 years!! Why? What has changed? It’s nothing more than a money grab.

Prospectors are being bullied by legal reps who stall and delay negotiations to inflate fees. These demands are making it impossible for small-scale operators to participate in the mining sector. The proposed ALRC reform process will do nothing but encourage this behavior!

5. Flawed Impact Assessment Model

The proposal to assess impact based on the maximum possible disturbance rather than the actual intended activity is completely illogical. Why assess a plan based on what someone might do?

This gives Native Title parties leverage to object more easily and push for further financial compensation. It is not fair, not practical, and not based on real-world logic.

6. Abuse of the Right to Negotiate

There are no clear limits on what Native Title parties can demand during negotiations. There needs to be:

- Caps on legal and survey costs
- A requirement for justification and cost breakdowns
- A limit on how often surveys can be demanded (e.g. once every 10 years)

If Native Title parties want to redo surveys more frequently, they should bear that cost — not the tenement holders.

7. Lack of Transparency in Heritage Sites

ALL heritage areas should be publicly registered. The claim that this information can't be published for "cultural reasons" is not good enough. If heritage is truly significant, it must be able to withstand transparency and documentation.

Also, surveys should be conducted or reviewed by independent third parties — not only Native Title-approved consultants.

8. Expedited Procedures Must Stay

The expedited procedure is critical for prospectors. It allows us to operate on low-impact areas without being strangled by cost and delay. If Native Title parties claim this isn't working, who exactly says that? Where is the data?

The burden of proof should remain with Native Title parties — but more importantly, existing heritage protections already cover significant areas.

9. RHSA Agreements Are Too Long and Too Vague

Current RHSAs (Regional Heritage Survey Agreements):
- Are unnecessarily lengthy (30+ pages)
- Are not up to date
- Lack clear cost justifications
- Allow for repeat survey requests without rationale

If they are outdated, update them — don't use that as a reason to extract more money. Every claim made under the RHSA should include:
- Specific coordinates
- Evidence of heritage
- A clear rationale of the objection

10. Objection Costs Should Not Fall on Tenement Holders

It is unacceptable and ridiculous that tenement holders in the proposal are expected to pay for the Native Title party's legal and objection costs. If they wish to object, they should fund it. Just like we fund our applications. If this proposal goes forward, of course Native title will object to all applicants as there is no risk involved or financial outlay to them.
Tenement holders should not be required to fund agreement-making negotiations. Native Title parties have access to legal aid and public funding. If they want to object or

negotiate, they should use their own resources. Requiring us to fund both sides is unfair and unsustainable.

11. Definitions of High and Low Risk Are Vague

The reforms mention "high-risk" and "low-risk" activities but fail to clearly define what these mean. If this is going to shape how tenements are processed, it must be clearly and consistently defined.

12. Native Title Management Plans and No-Go Areas

What exactly is a “No-go area”??

A legitimately sacred site should be backed by hard evidence, not just verbal claims
- Publicly mapped
- Verified by third-party professionals

Heritage significance should be consistent — not based on whether a company is willing to pay more.

For example, one time we went to court for an objection, and they said that the quartz blow where gold was found — about 300 metres by 300 metres in size — was caused by droppings from a giant cocky that was watching kangaroos mate. At a later court hearing, for the same quartz blow in the exact same location, it was no longer cocky droppings — it was claimed to be the fat from a giant evil spirit that had been burned there. The white colour of the quartz was said to be the spirit’s fat, and the gold was apparently the yellow fat. It was entirely fabricated on the spot!

This illustrates how arbitrary and unsubstantiated these claims can be, yet they are used to stop legitimate exploration work.

13. Reform Process Favors Large Companies

The entire framework being proposed is more accessible to large companies with legal teams and larger budgets. Prospectors are being regulated out of existence. The process is already stacked against us — these reforms make it worse.

Final Statement

Let me be clear: I am not disrespecting Native Title or the traditional owners of this land. I fully acknowledge and support the protection of genuine Aboriginal heritage — such as sacred sites, cave paintings, and birthing places — when they are properly identified and documented. These sites must be respected, without question.

However, what I do take issue with is the rise of fabricated or inconsistent claims that change depending on who is walking the ground, what day it is, or how much money is involved. This behaviour undermines genuine heritage protection and is being exploited for financial gain. It needs to stop.

I leave you with this question:
If everyday Australian prospectors were to act in the same inconsistent and opportunistic way towards Native Title holders, would our behaviour be accepted — or even tolerated?

Conclusion: Include the Voices of Prospectors

This process, as it stands, is excluding the very people who are most impacted. You cannot design a balanced system without hearing from prospectors, farmers, and tenement holders.

The reforms proposed will:
- Increase financial barriers
- Reduce transparency
- Prioritise Native Title income over fair heritage protection
- Drive small miners out of the industry

I urge the ALRC to take these concerns seriously. We deserve fairness, affordability, and a real voice in shaping the laws that affect our work, land access, and livelihood.

Kind regards,
Simon Lawes
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