

ALRC Native Title Act Review– Seqwater Submission

1. Background

The Queensland Bulk Water Supply Authority, Seqwater, is a statutory authority established under the *South East Queensland Water (Restructuring) Act 2007* (Qld).

Seqwater's responsibilities include delivering a safe, secure, and cost-effective water supply across South-East Queensland, and covers an area from the boarder of New South Wales, west to the base of the Toowoomba ranges and north to Gympie.

Seqwater welcomes the opportunity to comment on the Australian Law Reform Commission's (**ALRC**) Review into the Future Act Regime (**Review**) of the *Native Title Act 1993* (Cth) (**Native Title Act**).

2. Seqwater Projects and Native Title

Seqwater is committed to a considered and respectful approach to native title and to the protection of Aboriginal cultural heritage. Seqwater undertakes future acts with respect of its projects across South-East Queensland.

There are a number of Seqwater projects currently underway, where Seqwater is considering issues relating to native title and cultural heritage, being:

Project	Description
Toowoomba to Warwick pipeline	Seqwater is delivering an approximately 111-kilometre Toowoomba to Warwick pipeline on behalf of the Queensland Government.
Lake Macdonald Dam Improvement Project	This project includes constructing a temporary upstream cofferdam, a new spillway, and reconstructing the existing earth embankments.
North Pine Dam Improvement Project	The improvements to the dam are aimed at ensuring its continuing safe operation, including during extreme weather events and in compliance with modern safety standards.
Wivenhoe Dam Improvement Project	Planning is underway for upgrades to Wivenhoe Dam, with the project currently in an Options Analysis phase.
Somerset Dam Improvement Project	Seqwater is finalising the Detailed Business Case for the Somerset Dam Improvement Project, which will inform the design for the main dam upgrade.

Proposed Wyaralong Water Treatment Plant	Seqwater is planning for a new water treatment plant downstream from the existing Wyaralong Dam and a connection to the SEQ Water Grid as an additional drinking water source.
Canungra Water Supply Upgrade	Seqwater is investigating strategic water supply options for the off-grid community of Canungra. Investigations are underway to determine the preferred option to improve water supply reliability and support population growth in the area.
Beauresert Water Supply Upgrade	The Beauresert Water Supply Upgrade will provide a long-term water supply solution for the Scenic Rim, which includes the construction of a 24-kilometre pipeline connecting Beauresert to the SEQ Water Grid, and a three-kilometre pipeline to connect the Logan supply network off the corner of Bushland Road and Teviot Road to the Wyaralong Transfer Station.

Currently under the Native Title Act, Seqwater undertakes its projects pursuant to either Subdivision H (Management of water and airspace), Subdivision K (Facilities for services to the public) or by negotiation of an Indigenous Land Use Agreement (ILUA). These provisions allow Seqwater to undertake its responsibilities in a timely and cost-effective way other than ILUA which can take some time to conclude.

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 Seqwater and questions where Seqwater considers it has some useful insight. Seqwater 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.

Seqwater 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.

Seqwater 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, Seqwater 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. Seqwater 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.

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, Seqwater 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. Seqwater 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**).

As currently described, it is likely that many of Seqwater's activities, which are currently validated under either Subdivisions H or K, could attract the Right to Negotiate. Seqwater agrees that transitional provisions may be required and suggests that future acts currently validated under these provisions remain valid notwithstanding the outcome of the Review and any subsequent legislative amendment.

Seqwater suggests that the categories risk oversimplifying a complex regime and should be objectively defined to avoid disagreement between native title holders, proponents and the State/Commonwealth.

Seqwater supports the suggestion of a 'whole of project' future act notification, provided there is a mechanism for validating additional future acts that occur at a different time in the development of a project. For example, there may be some initial or exploratory works that are done at an early stage in a project to inform project viability or planning. According to the Discussion Paper, these initial works may attract the Right to Consultation, with subsequent future acts relating to actual project development likely attracting the Right to Negotiate. Any future acts that may occur with respect to these initial works should be able to be notified separately to the main project because the outcome of these works will often inform the main project. Seqwater suggests this mechanism should also allow for the validation of future acts that are identified after the 'whole of project' notification.

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. Procedural rights under section 24KA are often limited to a right to notification and comment.

Seqwater 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. However, Seqwater submits that there should be an exception to this process for future acts related to critical public infrastructure due to the public interest requirements in that infrastructure and the nature of services provided. The exception could apply to those future acts currently validated under section 24KA and any future variation or expansion of the future act beyond the original scope of the future act.

Where future acts fall within the 'public infrastructure' exception, Seqwater suggests that the procedural rights could be a Right to Consultation, regardless of the impact of the future act. Alternatively, if the Right to Negotiate is to apply, the procedural rights given to the native title party may be an expedited Right to Negotiation process – effectively, the Right to Negotiate Process suggested in the Discussion Paper, but with significantly shorter timeframes to ensure the continued and timely delivery of public services.

Examples of future acts that should fall with the exception, which might be undertaken by Seqwater, include:

The construction, operation, use, maintenance or repair (or a tenure or permit to allow the same) of a pipeline;

Emergency works, rectification works required after flood events and maintenance or replacement of infrastructure on land or waters where native title rights are interests are held.

Question 16 – Future Act impacts outside the footprint of the proposed activity

Question 16 asks if the impact of future acts on native title outside of the immediate footprint of the future act should be accounted for and gives an example of the grant of a water entitlement, which may affect native title rights and interests at the primary location of the future act as well as a different native title party downstream.

Seqwater has considered this question in the context of water rights only and considers this proposal shifts the focus from legal rights over land or water to the broader cultural and ecological impacts of a future act that extends beyond its immediate footprint. There should be a direct connection between the primary location of the future act and any secondary impact area. Any such nexus should be clearly defined in any new legislation as to avoid misinterpretation. The concept of a secondary impact area has the potential to be interpreted broadly, which could prove unworkable for proponents. Seqwater submits that the native title party of the secondary impact area, provided there is a direct connection with the primary location, should be entitled to a Right to Consultation only, regardless of the impact. However, Seqwater queries whether this issue – which is one of impact to the secondary impact area rather than the proponent having rights to the secondary impact area – is better dealt with under cultural heritage legislation. Such impacts are more appropriately addressed under the Aboriginal Cultural Heritage Act 2003, (Qld) which is specifically designed to recognise and manage these broader cultural connections, as reflected in section 23(1), which imposes statutory obligations based on gazetted definitions of cultural heritage and the cultural significance of an area.

Proposal 6 – Objections to Future Acts

The revised right to negotiate process, set out in Proposal 6, allows 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 substantially similar future act in the same location for a period of five years.

Seqwater considers that a five year pause would have a significant impact on works and project development, and submits that consideration should be given by the ALRC to an exemption for critical public infrastructure. It is also prohibitive for parties potentially seeking a positive negotiated outcome where circumstances have changed since the initial future act/ project proposal. While native title holders must retain the right to withhold consent, closing off dialogue removes the opportunity to reach a mutually acceptable solution should circumstances change or impacts be mitigated.

Shifting procedural power too far in one direction risks discouraging proponents from approaching native title parties altogether and, in the worst cases, may incentivise workarounds that bypass meaningful engagement.

This not only erodes trust but may also limit long-term economic and partnership opportunities for native title holders.

Separately, it is noted that Seqwater 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.

Proposal 8 – Compensation

Proposal 8 suggests that section 38(2) of the Native Title Act should be repealed or amended to empower the NNTT to impose conditions on the doing of a future act such 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. A repeal of this section at the same time as expanding the Right to Negotiate would open up the range of commercial arrangements that may be used to calculate compensation.

Seqwater acknowledges that there are native title agreements whereby compensation with reference to royalties, profits or other income generated is provided for and, in turn, may be appropriate. As a statutory authority, Seqwater is a regulated entity with revenue sufficient only to recover prudent and efficient costs related to bulk water supply plus an appropriate return on assets. While specific infrastructure within its portfolio may generate income, Seqwater's functions are service-based and delivered under statutory obligations.

Compensation models linked to profit or revenue are incompatible with Seqwater's structure and mandate.

There is also a risk that negotiations become locked or stalled if expectations are set around profit sharing in contexts where such mechanisms cannot be applied lawfully or practically.

To ensure negotiations remain constructive and realistic, compensation frameworks should differentiate between commercial proponents and public entities, allowing flexibility that reflects the nature of each party's legal and operational framework.

Seqwater submits that any conditions requiring compensation to be calculated with regard to income or profit need to be clearly identifiable and other compensation factors which might be more appropriate for Seqwater, as a public entity, would need to be identified separately to the income or profit context. If the NNTT are empowered to make determinations in this commercial context, criteria would need to be established to assist particularly in relation to other compensation factors which are not revenue or production based payments.