



Instating Economic Justice in the Future Acts Regime

Submission to the Australian Law Reform Commission on the Review of the Future Acts Regime Discussion Paper (May 2025)

**Cape York Regional Organisations
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Introduction: A Promise Unfulfilled

The Australian Law Reform Commission's Review of the Future Acts Regime is a critical opportunity to address one of the core shortcomings of Australia's Native Title system: its failure to deliver economic justice to Native Title holders. However its Discussion Paper released in May 2025 falls far short. It lacks the bold, transformative reforms needed to shift the entrenched economic disadvantage faced by Native Titleholders who have remained largely excluded from the wealth and prosperity generated across the nation for the three decades since the passage of the *Native Title Act 1993 (Cth)*.

At the heart of this injustice is the simple truth that Native Titleholders were never afforded equality in the negotiation of economic outcomes. Three decades under the *legislation* have made one thing clear: native title recognition has entrenched a system that structurally disadvantages Native Titleholders from the outset. Over time judicial interpretations and legislative amendments reinforced this imbalance. What emerged was a regime where proponents, investors and shareholders profited from resource extraction on Aboriginal and Torres Strait Islander lands – while the rightful custodians were systematically excluded from the benefits.

It is the consequence of a legal and policy architecture that failed to guarantee economic opportunity and participation for Native Titleholders. Nothing ensured that development on native title land delivered more than symbolic recognition. The result is a landscape where Native Titleholders are routinely out-resourced, out-manoeuvred and over-powered – recognised in law, yet disadvantaged in practice.

Yes, the ALRC Discussion Paper acknowledges some of the issues, but in truth it offers only some procedural reforms and minor adjustments. Nowhere does it propose reforms bold enough to bridge the gaping chasm between legal recognition and economic empowerment. These proposals – though not without merit in a limited sense – ultimately amount to little more than tinkering at the edges of a deeply flawed and inequitable system.

Technical adjustments to negotiations and tribunal processes will not correct the massive power imbalance at the heart of the system. We cannot speak of “opportunity” while Native Titleholders remain without the capacity or resources to seize it; we cannot demand responsibility for Native Titleholders while refusing to fund the very institutions that would enable it. Without bold structural change, the contradictions of the current system will continue, leaving Native Titleholders land rich and dirt poor. The moment demands far bolder action – action that this Discussion Paper has failed to muster.

It is time to fulfil the original promise of native title: that Native Titleholders should not only be the titular land titleholders, but share in the wealth and decision-making that should rightly flow from it. Meaningful reform must begin and end with this principle. Our submission on behalf of the Cape York Regional Organisations, argues that the ALRC must go beyond these incremental measures and truly embrace transformative reforms that add the economic dimension to native title.

A Bold Reform Agenda

We call for three core reforms. It goes without saying that everything must process from a firm commitment to Free, Prior and Informed Consent (FPIC) through proper agreement-making.

These reforms are:

1. **Statutory benefits scheme based on royalty equivalent payments in the form of a Native Title Future Fund.** For the Australian Parliament to establish a statutory scheme for Native Title Future Fund Benefits, calculated as a royalty equivalent for resource development on native title lands, akin to the scheme under the *Aboriginal Land Rights Act (Northern Territory) Act 1976*. The Fund would allocate benefits into the accounts of relevant Native Titleholder groups with resource projects on their land. This scheme would replace the negotiation of capital benefits under the Future Acts provisions of the *Native Title Act*. Whilst other economic benefits (employment, training) and social impact, as well as cultural heritage management and environmental management would still be the subject of negotiation procedures, capital benefits payments would be provided by the statutory scheme rather than by negotiation.
2. **Native Title Management Plans.** Recognition and resourcing of Native Title Management Plans (NTMPs) as proposed in the Discussion Paper. NTMPs should be embedded as a central mechanism in the Future Acts regime, enabling Native Titleholders to map cultural heritage, align tenure arrangements and plan for sustainable development on their country. NTMPs must be supported with adequate resources enabling Native Titleholders to formally create “investment-ready” tenure solutions so that they can care for, manage and develop land-based economies on their own terms.
3. **Resourcing Prescribed Body Corporates.** Provide adequate and sustained resourcing for PBCs: PBCs (and other Traditional Owner corporations holding land) must be funded and empowered to build the capacity required to govern and manage their lands under native title and other tenures. Only with secure, long-term resourcing can PBCs move from being reluctant gatekeepers to becoming engines of local economic development and self-determination.
4. **Ensuring Indigenous Land Use Agreements are the best evidence of Free, Prior and Informed Consent.** Ensure that Indigenous Land Use Agreements (ILUAs) are the only valid evidence of Free, Prior and Informed Consent (FPIC) for any dealing with native title lands, whether it be environmental schemes (eg carbon credits, conservation areas) or heritage listings (World Heritage or National Heritage). ILUAs, as binding agreements under the *Native Title Act* will ensure that Native Titleholder consent for future development on native title land is genuine, informed and respected.

In the sections that follow, we elaborate on each of these reform proposals, underscoring the principled case for a more just and empowering Future Acts regime. Our position is grounded in the lived experiences of Indigenous peoples since Mabo and it aims to put into effect the economic justice that our March 2025 submission called for. We urge the ALRC to seize this opportunity for truly transformative reform – anything less will fail to rectify the injustices of the status quo.

1. Statutory benefits scheme based on royalty equivalent payments in the form of a Native Title Future Fund.

Land rights without economic rights are a cruel illusion. It offers recognition without benefits, a title without means and responsibility without the capital to shoulder it. The time has come for Australia to redeem the unfulfilled promise of native title, in terms of economic empowerment and future prosperity. We propose the creation of a Native Title Future Fund royalty equivalents scheme. It is the means by which we ensure enduring capital accumulation and management for generations to come.

For too long, mining companies, the broader resources sector and governments have profited from the opportunities on native title lands, while Native Titleholders have received little in return, if anything at all.

A Native Title Future Fund royalty equivalents scheme – will grow the capital derived from native title lands to give the next generation the financial power to walk in two worlds with dignity, choice and strength.

The Fund would be co-designed with Indigenous peoples, drawing on best practice from both national and international models – particularly sovereign wealth funds like Australia’s Future Fund and successful Indigenous-owned wealth creation models, such as those developed by the Māori in Aotearoa New Zealand. Like these examples, the Fund must be designed to:

- Balance intergenerational equity, ensuring that today’s income does not erode tomorrow’s prosperity;
- Strategically allocate income, weighing short-term community needs against the long-term preservation and growth of capital;
- Invest income productively with a clear, accountable framework;
- Plan for the finite nature of resources, acknowledging that mining and extractive revenues must be converted into long-term wealth.

This is a call for a new economic architecture in the form of a national scheme, consistent across all States and Territories.:

There are statutory royalty schemes in at least four jurisdictions:

In the Northern Territory, under the Aboriginal Land Rights Act, the Aboriginal Benefits Account receives royalty equivalents from the Australian Government, which are then distributed in various ways.

In New South Wales, in the event of mining on Aboriginal land, royalties are payable under the Aboriginal Land Rights Act 1983 (NSW).

In South Australia, there is acknowledgement of historical rights through legislated revenue shares for APY and Maralinga peoples.

In Queensland there is a statutory royalty scheme under the Aboriginal Land Act 1991 (Qld), whereby the State returns to the owners of Aboriginal Land a portion of the royalties it receives from miners operating on Aboriginal Land Trust lands.

These limited schemes predate Mabo and the Native Title Act, but they are important precedents for this reform proposal. They represent the guarantee of economic participation for Aboriginal landowners, rather than leaving it to project-by-project negotiations with proponent companies. These schemes are guaranteed by the government rather than companies. Companies pay governments royalties, taxes and other levies – whilst governments return equivalents to landowners.

This reform is premised on relinquishing the Right to Negotiate under the Native Title Act insofar as economic benefit negotiations are concerned, in return for a guaranteed entitlement to equivalent payments under the proposed statutory scheme. This is the exchange of a procedural right into a statutory guarantee of benefit.

More capital benefits will be realised for Native Titleholders under a guaranteed statutory scheme than has accrued under the Right to Negotiate over three decades. It is not possible to lay out in this submission all of the details as to how a statutory Native Title Future Fund could work – a proper co-design process involving government, industry and Aboriginal and Torres Strait Islander organisations including of course, NTRBs and PBCs would need to design how such a Fund would work.

These are our initial thoughts about design:

- Legislation enabling the Native Title Future Fund would provide royalty equivalents to Indigenous landowners for resource development projects on their land
- Multiple Indigenous landowning groups would have accounts in the NTFF that they would own individually
- A common prudential management regime would govern all accounts in the NTFF, akin to a superannuation fund, taking royalty management away from trusts to a statutory fund
- The NTFF would be a fund within the Australian Government's Future Fund to enable funds growth

- Distributions from accounts would be subject to principles and purposes set out in regulation rather than at the whim of trustees
- No cash distribution to individuals or organisations outside of the principles set out in the regulation would be allowed
- Careful principles would govern the use of account funds for business investments to ensure that the corpus of funds are not risked
- Equity funding in the projects that are the subject of NTFF funding would be one permissible investment for landowner groups.

This is by no means a comprehensive articulation, rather a starting point for design discussion.

It is with this proposal that land rights will be turned into economic power – so that our children and grandchildren inherit not only the stories and responsibilities of Country, but the means to sustain them.

2. Native Title Management Plans including Investment Ready Tenures

The ALRC's Discussion Paper rightly highlights Native Title Management Plans (NTMPs) as a promising new pathway for authorising and managing Future Acts. We strongly support their formal recognition and believe they should become a cornerstone of the system. Designed and endorsed by Native Titleholders through their PBCs, NTMPs would enable communities to lead planning on their own terms – moving beyond a reactive, project-by-project approach. These plans would create the time and space to articulate how cultural heritage should be protected, what areas or values must be safeguarded and where and how economic activities may proceed on Country. In effect, NTMPs represent Indigenous-led land-use planning: mapping cultural and environmental values and aligning them with community development aspirations.

For NTMPs to realise their potential, two things are critical: official recognition and proper resourcing.

First, NTMPs should be given formal weight in the Future Acts regime – they could be endorsed by the NNTT like ILUAs and treated as the default framework for assessing proposed activities on that native title land. This would mean that any Future Act (eg a mining project, a conservation proposal, a tourism development, etc) would need to be compatible with or specifically provided for in the NTMP, unless the Native Titleholders agree otherwise. By according NTMPs this status, the system respects the principle that Native Titleholders themselves are best placed to determine the balance between protecting Country and pursuing opportunities on their land. It also creates clarity for proponents and governments: a clear NTMP can streamline processes by flagging upfront what is acceptable and under what conditions. In short, NTMPs can serve as tailored procedures for Future Acts in a given area,

potentially allowing for more robust protections or more efficient approvals, according to the priorities of the Native Titleholders.

Secondly and equally vital, is resourcing. Developing a comprehensive NTMP will be a substantial undertaking – it will involve community consultation, cultural heritage surveys, mapping of Country, identifying economic potential and often resolving complex land tenure questions. Many native title lands have layers of overlapping tenures or restrictions (eg National Parks and other environmental protection designations, pastoral leases, etc.) that can affect Native Titleholders in their use of the land. NTMPs, therefore, go hand-in-hand with what the Cape York Regional Organisations have called “Investment Ready Tenure” work. This means working through the legal and bureaucratic barriers to convert or secure tenure in forms that allow Native Titleholders to use and develop their land (such as obtaining Aboriginal Freehold over former reserves, or negotiating Indigenous access in National Parks, etc). Under a proper reform, PBCs should be supported by agencies like the NNTT, the ILSC, NIAA and Native Title Representative Bodies (NTRBs) to carry out this planning.

Cape York regional organisations propose a staged capacity model for PBCs. Under this approach, PBCs that demonstrate the capability to begin developing a NTMP – including a cultural heritage component – while concurrently working with the NTRB to build an Investment Ready Tenure (IRT) plan aligned with the NTMP – would attract additional investment and support from agencies. This sequencing is intended to ensure that once Native Titleholders articulate their long-term vision for Country through the NTMP, they are also supported to secure the tenure and land administration arrangements needed to bring that vision to life.

We recommend the ALRC champion dedicated funding and technical assistance for NTMPs nationwide. Every PBC demonstrating good governance should be given the opportunity (and funding) to prepare a NTMP for their lands.

NTMPs will enable Native Titleholders to identify where economic development can proceed in a culturally appropriate way and to flag where it cannot. This upfront planning is in everyone’s interest. It aligns conservation with development and can ensure cultural heritage mapping is done from the start, not as an afterthought. It also creates an “investment-ready” environment. When a community has a clear plan and the land tenure to match, outside investors and partners can more easily work with them on enterprises (be it carbon farming, tourism, agriculture, mining partnerships, etc). In summary, NTMPs are the vehicles by which Native Titleholders can exercise their land rights in practice, caring for country while also pursuing economic development on their own terms. Recognising NTMPs in the Future Acts regime and resourcing their creation is a visionary reform that the ALRC should endorse.

3. Resourcing Prescribed Body Corporates

At the heart of the challenge is the fact that native title has been a case of rights without support. The law handed PBCs the responsibility to manage native title lands and negotiate agreements but did not equip them with the funding or institutional power to do so effectively. As a result, many PBCs struggle just to meet basic compliance, let alone drive

development outcomes for their people. This must be urgently remedied. Strengthening PBCs is not a peripheral issue – it is the central requirement for a just and functional native title system. We recognise that governance is the bridge between recognition and opportunity. Without robust Indigenous governance, native title risks being symbolic, a paper right. If native title is to mean anything in the new era of critical minerals, carbon markets and renewable energy, we must restore the authority of Native Titleholders – not only through law but through institutional power and capability.

What does this mean in practical policy terms? First and foremost, adequate and sustained funding for PBCs. Current funding – primarily modest government grants combined with inconsistent support from Native Title Representative Bodies (NTRBs) – is grossly insufficient. We recommend establishing a long-term funding model, possibly through a Future Acts levy, to provide each PBC with core operational resources, professional staff and access to expert advice.

The Cape York Regional Organisations are exploring a tiered capability framework, where PBCs would receive increasing resources as they demonstrate higher levels of governance capacity. For example, at a basic level, every PBC might receive funding to support a coordinator and cover meeting costs; at higher levels, funding could extend to business development officers, rangers, or joint-venture projects. The exact mechanism remains to be determined, but the principle is clear: it is unjust to expect PBCs to manage vast lands, negotiate with industry and government, protect cultural heritage and foster economic opportunities – all on a shoestring budget.

Secondly, capacity building must extend beyond financial resources to encompass partnerships and knowledge transfer. Many PBCs need access to legal, financial and technical expertise. The role of NTRBs should evolve into that of capability enablers, not controllers. Rather than acting as bureaucratic intermediaries, NTRBs should be resourced to genuinely empower PBCs, support must go beyond compliance checklists. This means mentoring and assisting them to develop robust rule books, manage legal obligations and plan enterprises - under their own leadership. The goal is for PBCs to stand independently: making informed decisions, negotiating on equal terms with investors and exercising meaningful authority over their lands.

With strong institutions, Indigenous peoples can not only say “no” when necessary but also drive development projects when they choose - on their own terms.

Ultimately, resourcing PBCs is an investment not only in Indigenous communities but in the nation’s future. Imagine a Future Acts regime where PBCs have the staff and skills to proactively negotiate agreements that create jobs and local enterprises; where they manage conservation estates through ranger programs, run cultural tourism ventures and hold equity in mining or energy projects. This vision is already emerging in places where Indigenous organisations have been empowered. To make it the norm - not the exception- structural support must be built into the system.

4. Ensuring Indigenous Land Use Agreements are the best evidence of Free, Prior and Informed Consent.

Finally, we address the crucial principle of Free, Prior and Informed Consent (FPIC). International human rights standards (like UNDRIP) insist that Indigenous peoples must give consent to activities that affect their lands. In the Australian native title context, the mechanism for securing such consent is well established: agreements under the Native Title Act, in the form of Indigenous Land Use Agreements (ILUAs). They are, by design, the clearest evidence of Indigenous consent to Future Acts. We assert that ILUAs must be the baseline for any significant Future Act on Indigenous land, whether it be the creation of a carbon credit project, the declaration of a National Park or World Heritage area, or any major development. Without ILUA (or an equivalent native title agreement) claims of consent are illusory.

The Cape York experience with a proposed World Heritage Tentative Listing illustrates the problem. In this case, governments attempted to proceed with a heritage listing via hurried consultations and a “show of hands” at community meetings, rather than through formal agreement. This was fundamentally at odds with Indigenous decision-making and the requirements of FPIC. ILUAs are subject to oversight by the Tribunal and the Federal Court, which safeguards Indigenous people by ensuring a robust, proper process. And critically, when an ILUA is registered, all Native Titleholders (and other parties) are bound by its terms, giving everyone certainty in the outcome. In the World Heritage case, the attempt to shortcut the ILUA process completely undermined any claims made that FPIC was sought or provided. In other words, anything short of the established ILUA process falls below the standard of free, prior and informed consent.

This lesson must be applied consistently across the native title system. We therefore recommend that the ALRC clearly affirm in its report that Indigenous Land Use Agreements (ILUAs) - or analogous agreements under the Act – should be the required means for authorising Future Acts, particularly those initiated by governments for broad public purposes such as conservation zones, infrastructure corridors and other major developments.

The ALRC can reinforce this by proposing, for instance, that specific categories of actions (eg large-scale environmental schemes on native title land) must demonstrate consent via ILUA.

Insisting on ILUAs as the basis for consent helps level the playing field. ILUA negotiations give landowners the opportunity to say “yes” on their terms. They can negotiate for equity, employment, cultural heritage protections, environmental safeguards and profit-sharing in return for consent. When done properly, this process is a living expression of self-determination: Native Titleholders as the rightful custodians of the land, sitting at the table as decision-makers.

This is far superior to unilateral government decisions or imposed outcomes. We again refer to the Cape York example where landowners expressed a willingness to support World Heritage listing - but only if pursued through a comprehensive ILUA that addresses their concerns, including management funding, job creation and protections against exclusion from future economic opportunities. Properly done this approach transforms a potential source of conflict into a pathway for mutual benefit.

The same principle applies to carbon abatement projects or biodiversity conservation on native title lands. ILUAs allow landowners to give informed consent in exchange for tangible benefits - such as revenue from carbon credits and enforceable cultural heritage protections. Without ILUAs, even well-intentioned “green” initiatives risk replicating past injustices by sidelining Native Titleholders and excluding them from opportunities that arise on their own land.

In conclusion, we urge the ALRC to make Free, Prior and Informed Consent via ILUAs a non-negotiable tenet of the Future Acts regime. The standard must be an agreement. Let ILUAs be the vehicles of that consent. If it’s not an ILUA, it’s not genuinely free, prior, or informed and should not proceed.

Conclusion: From Cultural Recognition to Economic Justice

The reforms we advocate are necessary and just. The Future Acts regime sits at the intersection of Indigenous rights and Australia’s economic development. It can continue its current path – tinkering at the edges while Native Titleholders remain marginalised from the wealth of their lands – or it can be boldly reimagined as a vehicle for Indigenous empowerment and economic justice. We choose the latter.

In this submission, we have outlined a vision consistent with the ideals long articulated by the Cape York Regional Organisations: a vision of Indigenous peoples as equity participants in the Australian economy, not as passive stakeholders or impediments to development. To achieve this, the native title system must undergo structural change: a foundation for sustainable investment that prioritises future generations over fleeting returns, nationwide alignment of benefits for Native Titleholders from land use and development, planning frameworks led by Native Titleholders, strong Indigenous institutions and an ironclad guarantee of consent.

These proposals address the challenges of our time. Australia is entering new industries (critical minerals, renewables, carbon markets) that will heavily impact native title lands. There is an historic opportunity to ensure First Nations peoples benefit as co-owners and co-proponents of these developments, rather than watching from the sidelines. Our proposals will ensure the creation of jobs and industries that support families and drive regional economies – all while safeguarding the sacred connection to Country. It lays the groundwork for best-practice agreements in emerging sectors, to demonstrate that development need not come at the cost of Indigenous rights. On the contrary, Indigenous leadership can enhance projects and deliver long-term stability.

We submit to the ALRC that the proposals discussed in the Discussion Paper will be a missed opportunity and a failure of justice. This current inquiry risks being an exercise in small-bore procedural adjustments; when it should rather confront the legacy of economic exclusion that has plagued native title since its inception. This is, as we have noted, the moment to right the

structural injustices built into the system. Our proposals call for innovation, courage for Australian governments, business and the wider community to embrace true partnership with Indigenous Australians. The reforms simply propose that Indigenous people be treated as landowners entitled to participate in the wealth creation on their lands.

In closing, we remind the Commission that the promise of native title will only be realised through institutions strong enough to carry it. By adopting these bold proposals, native title will be transformed from a hollow recognition into a living reality of Indigenous empowerment. We will move from “recognition without resourcing” to recognition with resourcing, from empty rights to rights with remedies. We submit that this is the only path consistent with the promise of justice that Mabo set in motion.

We commend these recommendations to the ALRC and urge their adoption.