

Submission: Why the Current Review of the Future Acts Regime (2025) Is Not Working

Introduction

The current review of the Future Acts Regime under the Native Title Act 1993 (Cth) aims to improve land access, negotiation processes, and protections for native title holders. However, despite these efforts, many fundamental issues remain unaddressed, particularly concerning fairness, participation, and transparency. These issues disproportionately affect family groups and individual native title holders, who often feel marginalised within the current legal framework.

Key Issues and Concerns

1. Exclusion of Family and Community Groups from Negotiations

- Native title negotiations are often conducted without meaningful involvement of family groups and individual native title holders.
- These groups feel excluded from decision-making processes affecting their land and cultural heritage, leading to frustration and distrust.

2. Lack of Transparency and Accountability

- Negotiations and agreements are frequently conducted behind closed doors, with limited public visibility.
- Native title holders lack access to information about the terms and conditions of agreements, which undermines trust and community support.

3. Inadequate Recognition of Cultural and Traditional Rights

- The legal focus remains on procedural aspects, neglecting the cultural significance and traditional connections of native title holders to their land.
- Law reforms do not sufficiently protect or prioritise these cultural values.

4. Insufficient Resources and Support

- Native title groups, especially family and community groups, lack the necessary funding, capacity, and legal support to participate effectively.
- This limits their ability to negotiate, enforce rights, and protect cultural heritage.

5. Weak Dispute Resolution and Enforcement

- Disputes often escalate to costly court proceedings, which are inaccessible and intimidating.
- Enforcement mechanisms are weak, leading to breaches of agreements, destruction of cultural sites, and unfair land use.

Why the Reform is Not Enough

Despite proposals aiming to make agreements fairer, including standards for conduct, content, dispute resolution, and transparency, these measures are often not fully implemented or enforced. Many native title holders continue to experience marginalisation and lack confidence in the system

Proposed Solutions and Recommendations**

1. Make Agreements Fairer

Conduct Standards:

- Establish clear standards for respectful, honest, and good-faith negotiations.
- Ensure all parties behave ethically and transparently during negotiations.

Content Standards:

- Define mandatory elements that must be included in agreements, such as cultural heritage protections, employment, and benefit-sharing provisions.

Dispute Resolution:

- Develop accessible, culturally appropriate mechanisms for resolving disagreements.
- Ensure that disputes are resolved fairly, efficiently, and without costly litigation.

2. Improve Transparency and Confidentiality Balance

Transparency:

- Increase public access to non-sensitive terms of agreements to build trust.
- Establish clear policies on what information can be made public.

Confidentiality:

- Protect sensitive cultural or personal information, but avoid overly secretive agreements that undermine community trust.

3. Enhance Participation and Representation

- Create mechanisms for family groups and individual native title holders to be directly involved in negotiations and decision-making processes.

4. Strengthen Resources and Support

- Increase funding for native title groups, PBCs, and community organizations to enable meaningful participation and effective management.

5. Establish Robust Dispute Resolution and Enforcement

- Develop culturally appropriate dispute resolution processes involving community elders and mediators.
- Strengthen legal and enforcement mechanisms to uphold agreement terms and cultural heritage protections.

6. Create Oversight and Advisory Bodies

- Establish First Nations advisory groups to oversee the implementation of reforms and advocate for native title interests.

Conclusion

The current reforms do not sufficiently address the core issues of fairness, participation, and trust. Without meaningful change—particularly in establishing fair conduct standards, transparent processes, and dispute resolution mechanisms—the rights of native title holders, especially family groups and individuals, will continue to be undermined. We urge authorities to implement inclusive, culturally sensitive, and enforceable reforms that truly empower native title communities.