



REVIEW OF THE FUTURE ACTS REGIME

Submission to the Australian Law Reform
Commission

Abstract

Response to the Australian Law Reform Commission's Discussion Paper.

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1. Introduction

The Bardi Jawi Niimidiman Aboriginal Corporation (BJNAC) is a Prescribed Body Corporate (PBC) responsible for holding and managing native title rights and interests on behalf of the Bardi and Jawi people.

As the registered native title body corporate, BJNAC is the primary point of contact for Government and proponents seeking to engage in activities that may affect native title on Bardi and Jawi Country. In this role, BJNAC regularly engages with the future acts regime under the *Native Title Act 1993* (Cth) (NTA), particularly in relation to land use proposals, infrastructure development, and tenure related negotiations.

Through this experience, BJNAC has developed a practical understanding of the regime's strengths and limitations, and this submission draws on that experience to provide comment on the Australian Law Reform Commission's (ALRC) Discussion Paper.

2. Native Title Management Plans

BJNAC supports the ALRC's proposal to formalise Native Title Management Plans (NTMPs) as a tool to enable proactive, community led decision making about land use, heritage protection, and development priorities. As a PBC with a clear vision for land activation and tenure reform, BJNAC views NTMPs as an opportunity to embed cultural governance at the centre of statutory processes and to ensure that Traditional Owners have a genuine say in how their Country is managed.

Native title, while legally recognised, has not yet translated into functional control or meaningful use of land for many PBCs. Native title recognition is often hollowed out by procedural red tape, with Traditional Owners often remaining "renters on their own land" due to outdated tenure systems and limited procedural rights under the current future acts regime.

This is especially evident in the operation of section 24JAA, which allows public housing and associated infrastructure to be built on native title land with minimal consultation and no requirement for consent. Although section 24JAA was intended as a temporary measure, its continued availability could undermine the value of NTMPs, particularly where those plans propose negotiated outcomes as a condition for development of public housing on native title lands. By providing a pathway that avoids consent, section 24JAA would enable Governments to bypass the alternative future act procedures NTMPs are designed to support, which would perpetuate the status quo of renting for life, rather than enabling genuine community control and long term land reform.

BJNAC sees NTMPs as a mechanism to:

- Translate cultural protocols and law into land management rules that must be respected by proponents and Government;
- Assert PBC led priorities across land and sea Country, recognising the integrated and holistic nature of traditional governance;
- Streamline future act negotiations by pre-establishing conditions and expectations for access, land use, and benefit sharing; and
- Replace reliance on section 24JAA with negotiated agreements that respect cultural authority and community consent.

In addition to these functions, BJNAC supports the ALRC's recognition that NTMPs can and should serve a broader purpose beyond validating future acts. NTMPs should be tools for PBCs themselves, not just for Government or proponents. They could be used to plan, develop, and activate their own land estates in alignment with cultural values and community aspirations. This includes situations where a PBC seeks tenure reform on Unallocated Crown Land (UCL) and must initiate a future act process to do so.

To support this expanded role, BJNAC recommends the establishment of a Land Activation Entity, modelled on international best practice such as the Nunavut Planning Commission. This entity would assist PBCs by:

- Offering technical and financial assistance to develop NTMPs, particularly where no external proponent is involved;
- Providing strategic planning support and culturally aligned land use frameworks;
- Conducting feasibility studies and due diligence to assess development potential and risks; and
- Supporting tenure reform processes and ensuring land is legally and practically usable.

Resourcing is a critical consideration. Unlike ILUAs, where proponents often contribute to agreement making costs, NTMPs initiated by PBCs may lack a funding partner. In such cases, the Land Activation Entity could serve as a funding conduit or delivery partner, ensuring that NTMPs are not only developed, but implemented effectively.

By embedding NTMPs with a broad PBC land activation strategy, supported by a dedicated Land Activation Entity, this would ensure that native title delivers not just recognition, but real, community led outcomes.

We also support the development of national standards and flexible templates for NTMPs, but emphasise that these must allow for cultural specificity and local governance structures; as they must be adaptable to regional contexts, not just technical overlays or planning instruments.

Finally, we also support a human rights based approach to land governance embedded in NTMPs. This would be a tangible way to advance free, prior and informed consent (FPIC), cultural heritage protection, and self-determination, which are all principles that are fundamental to the UN Declaration on the Rights of Indigenous Peoples and to Australia's commitments under the National Agreement for Closing the Gap.

3. Promoting Fair and Equitable Agreements

BJNAC strongly supports the ALRC's focus on improving the fairness and equity of agreements made under the future acts regime. As a PBC that engages with Government and proponents seeking to access Bardi and Jawi Country, we have observed firsthand how agreements are too often shaped by power imbalances, rushed timelines, and procedural compliance that fails to meet the standard of genuine negotiation.

A recurring issue is that PBCs are often forced to negotiate from a position of disadvantage, with limited resources, technical support, or legal leverage. Meanwhile, proponents, especially Government, can satisfy the formal procedural requirements under the NTA without meaningfully addressing community priorities or ensuring cultural safeguards. This disparity is particularly evident under section 24JAA, which reduces the process for public housing development to mere

notification, stripping Traditional Owners of the right to negotiate or withhold consent. These are not genuine agreements, they are administrative impositions that override self-determination, sideline PBCs, and entrench a cycle where our people often remain renters for life on their own Country.

BJNAC is actively developing place based and culturally grounded approaches to land use agreements, including precinct based models and Indigenous Land Use Agreements (ILUAs) that integrate governance, environmental stewardship, infrastructure planning, and economic development. We see negotiated agreements as an opportunity, not an obligation, to enable Traditional Owners to drive development that aligns with their values and long term goals. However, this is only possible when the negotiation environment is properly supported, funded and grounded in principles of equity, respect, and informed decision making.

BJNAC therefore supports the following reforms:

- Strengthen “good faith” negotiation requirements by including transparency around benefit sharing, timelines, and expectations of cultural co-design;
- Introduce a FPIC mechanism for high impact future acts, aligned with the UN Declaration on the Rights of Indigenous Peoples;
- Legislate binding timelines for negotiations under the right to negotiate regime, while allowing PBCs the ability to pause or extend where needed to ensure proper community consultation;
- Empower arbitral bodies (e.g. the National Native Title Tribunal) to consider cultural factors, impose royalty conditions, and assess equity, not just legality; and
- Require the registration of all native title agreements and introduce confidential but auditable reporting frameworks to track implementation and compliance.

Many native title parties experience future act agreements as being made under duress, with little visibility into their long term benefits or enforceability. This is particularly problematic where agreements result in extinguishment of native title, or where the benefits promised do not materialise. BJNAC believes that agreements must do more than tick boxes, they must be enforceable, transparent, and developed in a way that reflects the equal standing of Traditional Owners at the negotiation table.

BJNAC welcomes reforms that will promote integrity, accountability, and fairness in the agreement making process. This includes moving beyond transactional models to long term partnerships that embed PBC leadership, cultural authority, and mutual accountability.

4. Reshaping the Statutory Procedures

BJNAC supports the ALRC’s intent to reshape the statutory procedures under the NTA to better reflect principles of self-determination, cultural authority, and community led development. The current legislative framework is overly complex, procedurally rigid, and often serves to reinforce power imbalances between Traditional Owners, Government, and industry.

BJNAC has seen how statutory mechanisms too often prioritise administrative efficiency and development certainty over genuine engagement and long term cultural, social, and economic outcomes.

The statutory framework remains highly legalistic, and frequently fails to accommodate for adequate resourcing and culturally grounded processes for decision making. There are few formal avenues for incorporating Aboriginal law and governance into procedural steps. As a result, PBCs like BJNAC are often left to “fit” their systems into externally imposed structures, rather than being empowered to lead processes on their own terms.

Section 24JAA remains a key example of statutory overreach that fails to respect PBC authority. Originally designed as a transitional mechanism to expedite public housing and associated infrastructure delivery, it now functions as a permanent workaround that allows Governments to override native title rights under the guise of urgency. It removes meaningful consultation and prevents PBCs from using statutory procedures like ILUAs to negotiate land use outcomes.

BJNAC has been clear in its advocacy that the sunset clause of s 24JAA in 2031 must be honoured, and that no further extension or replication of this mechanism should occur. The real path forward is through negotiated ILUAs (or the introduction of NTMPs) and tenure reform that is co-designed with Traditional Owners.

BJNAC supports the following procedural reforms:

- Simplify and streamline future act pathways to reduce duplication, delay, and legal ambiguity, while maintaining strong protections for native title rights;
- Ensure all statutory procedures allow for culturally appropriate decision making, including resourcing and timeframes that accommodate community processes such as yarning circles and lore based consensus processes;
- Remove or significantly reform low threshold pathways like the expedited procedure and section 24JAA, which limit native title holders’ ability to say no or negotiate terms; and
- Align statutory processes with Closing the Gap Priority Reform Three, which calls for structural transformation of Government systems to empower Aboriginal led decision making.

Ultimately, procedural reform must do more than streamline administration, it must redistribute authority. The statutory process should function to elevate Traditional Owner priorities and governance systems, not to control or sideline them.

BJNAC urges the ALRC to ensure that all statutory procedures are revised through a self-determination lens, informed by the realities on the ground. True reform means that native title processes should serve the needs of communities, not the convenience of bureaucracy.

5. Compensation and Other Payments

BJNAC welcomes the ALRC’s review of how compensation and other payments operate within the future acts regime and submits that current arrangements are inadequate, opaque, and misaligned with the real impact of land use and development on native title parties.

The current system places the burden on native title parties to negotiate for compensation under conditions that favour proponents and often result in agreements made under practical or procedural duress. Compensation processes are fragmented, lack clear valuation methods for cultural loss, and fail to reflect the cumulative impacts of development on Country, culture, and governance. This is especially concerning when extinguishment of native title is involved or when

procedural rights are bypassed entirely through mechanisms such as the section 24JAA notification process, which denies Traditional Owners the right to negotiate.

BJNAC believes that compensation should not just be a financial matter, but a matter of justice, accountability, and restoration. Fair and equitable compensation must:

- Reflect both economic and cultural loss, including damage to lore grounds, spiritual connections, and the ability to practice traditional responsibilities on Country;
- Recognise the ongoing burden placed on PBCs who are required to engage in complex, proponent driven processes without adequate support;
- Be linked to community led development priorities, ensuring that compensation delivers long term benefit to native title holders; and
- Be enforceable, transparent, and tied to clear implementation frameworks, with accountability for Government and proponent compliance.

In addition, BJNAC supports reforms that address the coercive use of extinguishment in exchange for compensation. Native title holders are often placed in the position of having to “trade away” rights simply to receive any form of compensation or development benefit. This perpetuates the original dispossession that the NTA was meant to redress. In our view, compensation should never require extinguishment as a precondition. Instead, mechanisms should exist to support non-extinguishing development agreements backed by fair and transparent compensation arrangements.

BJNAC also endorses the following recommendations:

- The development of a clear national framework for calculating and negotiating compensation, including valuation principles for cultural loss and community impacts;
- Reform to ensure that compensation agreements cannot be used to avoid proper negotiation; and
- Greater emphasis on benefit sharing and equity models over one off payments, ensuring intergenerational wealth and capacity building for Traditional Owner groups.

In Bardi and Jawi Country, BJNAC is not only negotiating for compensation, it has built a governance model that puts cultural integrity and community prosperity at the centre of land use decision making. But this work cannot be sustained without a fair, resourced, and culturally responsive compensation framework that respects the depth of what has been lost, and what is being rebuilt.

6. Resourcing, Costs, and Implementation

BJNAC strongly supports the ALRC’s focus on the critical issue of resourcing and implementation. Structural underfunding of PBCs is one of the most significant barriers to achieving the full intent of the NTA, a barrier that undermines every stage of the future acts regime, from negotiation to compliance, cultural heritage management to compensation, and strategic land development to governance.

BJNAC operates across a large, remote and complex land and sea estate, carrying statutory responsibilities with limited core funding, reliance on short term grants, and no guarantee of sustained support. We are ready with a functioning governance structure, community mandate

and land reform strategies. But the policy ambition we've been encouraged to pursue by Government is consistently met with a lack of investment and bureaucratic inertia.

This paradox is not unique to BJNAC. Traditional Owner groups are not voluntary participants in the native title system, it is imposed on them. Yet while Government and industry have access to substantial legal, planning, and engagement resources, PBCs are expected to self fund complex negotiations, respond to statutory notifications, and develop and implement land activation projects. Often, PBC representatives are left taking unpaid leave, working out of homes, and relying on overextended staff or volunteers to carry the burden.

This funding gap is more than administrative, it is a direct threat to self-determination.

BJNAC supports the following reforms to ensure that resourcing is no longer an afterthought but a foundational component of a fair and functioning future acts regime:

- Establish long-term, scalable baseline funding for all PBCs, matched to the size, complexity, and community reach of their responsibilities and land and sea estates;
- Create a dedicated national PBC Future Fund to guarantee independent and sustainable investment in PBC operations, governance, and leadership development;
- Resource native title agreement implementation, including capacity to monitor compliance, deliver benefits, manage land use, and engage in co-designed development planning;
- End the expectation that compensation or benefit packages fund PBC operations, and instead require Governments and proponents to contribute directly to the costs of engagement and agreement making;
- Support intergenerational governance, including youth leadership pathways, succession planning, and cultural continuity, especially in remote and coastal communities like Bardi and Jawi Country; and
- Establish and fund a Land Activation Entity, modelled on the Nunavut Planning Commission, to provide strategic planning, feasibility studies, tenure reform support, and due diligence services to PBCs.

Resourcing must also allow PBCs to participate in proper ILUA processes and land negotiations. Without this, we risk replacing one inequitable system with another, simply shifting the procedural load onto already overstretched communities.

As BJNAC has consistently said, we are ready. But readiness without resourcing cannot deliver outcomes. To help move native title from recognition to realisation, the future acts regime must be backed by real investment in the people and structures who carry its responsibilities and its potential.

7. Aboriginal and Torres Strait Islander Cultural Heritage

BJNAC welcomes the ALRC's recognition that the protection of Aboriginal and Torres Strait Islander cultural heritage must be integral to the future acts regime. The failure to embed cultural authority and heritage protection into native title processes continues to erode trust, undermine cultural rights, and expose Country to irreparable damage.

For Bardi and Jawi people, culture is not separate from land and sea, it is law, story, ceremony, and responsibility, deeply embedded in both land and sea Country. Our cultural heritage is living

and active, expressed not only through sites and artefacts but through governance systems, intergenerational knowledge, and the continuing performance of lore. Traditional ceremony and cultural authority remain strong in our communities and shape how we govern and care for Country today.

Yet despite this strength, existing heritage laws, and the way they intersect with the NTA, continue to treat cultural heritage as secondary to development. In practice, cultural heritage considerations are often siloed from future act processes, inconsistently applied across jurisdictions, and governed by state frameworks that often exclude or override Traditional Owner input. The consequences have included destroyed sites, rushed approvals, and the silencing of cultural knowledge in decision making forums.

BJNAC strongly supports proposals to reform the future acts regime to:

- Embed cultural heritage protection as a core objective of the NTA, not a peripheral consideration;
- Recognise PBCs as cultural authorities with the right to define, manage, and protect heritage on their Country, including through statutory rights to refuse or condition access;
- Align future acts processes with a national framework for Indigenous Cultural and Intellectual Property protection, including mandatory consent, attribution, and benefit sharing when cultural knowledge or materials are accessed or used; and
- Trigger automatic cultural heritage decision making powers for PBCs upon their native title determination.

Cultural heritage must not be treated as a tick box exercise or an administrative hurdle to development. Instead, it should be understood as a system of knowledge, authority, and custodianship that holds communities together and guides decisions on how land is used, protected, or shared.

The ALRC's proposals offer a critical opportunity to correct decades of imbalance. Reform must ensure that cultural heritage is not subordinated to development outcomes, it must be protected as a right in itself, one that is inseparable from native title and central to any future acts process.

BJNAC urges the ALRC to recommend legislative and procedural changes that recognise cultural heritage not as a compliance risk, but as a living system of law and governance that belongs to and must be led by Aboriginal and Torres Strait Islander peoples.

8. Additional Issues Missing from Discussion Paper

While the ALRC Discussion Paper provides a strong foundation for reform, BJNAC notes three significant issues that have not been sufficiently addressed: (1) the urgent need to streamline tenure resolution to unlock native title land for economic and cultural development, (2) the looming sunset clause of section 24JAA and the lack of a coordinated national response, and (3) progress the unfinished business of implementing the social justice package.

8.1 Streamlining Tenure Resolution to Unlock Economic Use

BJNAC has repeatedly highlighted that native title recognition without tenure reform results in land that is legally acknowledged but practically unusable. Across Bardi and Jawi Country, large areas of Aboriginal Lands Trust reserves and UCL remain under restrictive tenure, burdened by

unresolved interests and bureaucratic complexity that prevent Traditional Owners from using their land for housing, infrastructure, cultural projects, or enterprise development.

This tenure gridlock undermines the very purpose of the NTA, by limiting the ability of PBCs to engage in place based, community led development. It imposes holding costs and legal risks, reduces investor confidence, and stalls progress on economic self-determination.

BJNAC supports the following recommendations:

- Streamline the conversion of UCL land to tenure to be held by PBCs that is culturally appropriate, legally secure, and fit for development, without imposing additional costs or red tape on those PBCs;
- Fund and establish dedicated legal and planning support for PBCs to lead precinct based land activation processes in partnership with Government and industry; and
- Place PBCs at the centre of decision making on land reform, recognising them as the rightful custodians of Country and the most capable architects of sustainable development when properly resourced.

Our precinct based ALT divestment and UCL ILUA strategies are ready to proceed but are being stalled by slow, underfunded, and fragmented Government processes. Until land tenure reform becomes a priority area of implementation, PBCs will remain stuck in a cycle of recognition without realisation.

8.2 Section 24JAA – Sunset Clause and Looming Risk

Section 24JAA of the NTA was introduced as a transitional provision to allow public housing and associated infrastructure to proceed on native title land using a simplified notification process. However, this mechanism has become entrenched and is now the primary way that public housing is developed on native title land, without consent, without negotiation, and often without cultural protection.

Originally enacted for 10 years and then extended to 2031, s 24JAA overrides the rights of native title holders under the guise of administrative efficiency. While it applies the non-extinguishment principle, it functionally limits PBC authority and reinforces disempowerment. It has allowed Governments to develop housing on native title land without negotiating ILUAs, bypassing the standard procedures that recognise native title.

BJNAC strongly opposes any further extension of section 24JAA and urges the ALRC to address the policy and legal vacuum that will follow its expiry.

We recommend:

- Immediate national consultation on a post-2031 framework that is rights based, consent driven, and built on co-design;
- No further legislative extensions or amendments that preserve the flawed logic of section 24JAA;
- Support for tenure reform and ILUAs as the new default mechanisms for public housing and associated infrastructure, recognising PBCs as the legitimate authority on land use planning;

- Informing key stakeholders (AIATSIS, NIAA, NNTC) of the risks and opportunities related to the expiration of s 24JAA, including its role in community planning and native title integrity; and
- Using BJNAC's land activation model (please contact us for further details) as a case study for how to transition from state driven notification to PBC led development pathways.

This issue cannot be treated as an administrative inconvenience. It is a defining moment for the native title system. If Governments default to another rushed extension of s 24JAA, it will represent a significant backward step for Aboriginal land rights and self-determination. The provision bypasses consent and too often locks Aboriginal people into being renters for life, rather than enabling them to own, develop, and manage their traditional lands. Now is the time to invest in real solutions and let PBCs lead.

8.3 Social Justice Package

The NTA was one part of a broader political and moral promise made in response to the Mabo decision. That promise included a tripartite package: native title recognition, a land fund, and a social justice package. More than thirty years later, while native title and elements of the land fund were implemented, the social justice package remains unfinished business.

For Bardi and Jawi people, this broken promise continues to manifest in structural exclusion from land based decision making, under investment in cultural governance, and the lack of a dedicated national mechanism to address the enduring impacts of dispossession and exclusion, including the historical injustice of discriminatory inheritance laws and the systemic theft of Aboriginal wages. While some jurisdictions have introduced reparations schemes for stolen wages, these efforts remain fragmented and fail to confront the intertwined legacies of inheritance exclusion and economic dispossession experienced by Aboriginal communities.

These policies not only denied generations of Aboriginal people the ability to accumulate and transfer wealth, but have also left PBCs without the financial base or institutional support needed to carry the heavy burden of their statutory and cultural responsibilities. Aboriginal people were given no rights for generations, and now, through PBCs, they are expected to uphold cultural authority, manage land interests, engage with Governments and developers, and protect Country, often with little or no resourcing.

If Government remains unwilling to implement the unfinished business of a social justice package and fund PBCs adequately, then the case for reparative action, potentially through mechanisms like a class action for inheritance exclusion, akin to and intertwined with the stolen wages claims, will only grow stronger.

Native title was never intended to be the ceiling, it was meant to be a foundation. Without the complementary pillar of social justice, the regime risks reinforcing inequality rather than addressing it.

BJNAC calls for the ALRC to explicitly recommend the implementation of the long overdue social justice package, with a focus on structural reforms that strengthen the governance, capacity, and economic development potential of PBCs. This includes:

- A national, legislated framework for resourcing PBCs, including core operational funding, cultural governance support, and capital for land development initiatives;

- Monitoring the impacts of native title law and policy on Aboriginal and Torres Strait Islander peoples and to hold Governments accountable for progress;
- A truth and justice mechanism for land reform, to ensure that native title determinations are not treated as the end point of justice, but the beginning of an ongoing relationship grounded in truth, healing, and recognition of harm; and
- Integration of the social justice package into native title reform agendas, ensuring that proposed amendments are assessed not only for legal consistency, but also for their contribution to long term equity, empowerment, and place based development.

BJNAC's experience demonstrates that with proper support and the right policy settings, PBCs are ready and able to lead. But without justice embedded in the system, through resourcing, voice, and meaningful control, recognition alone cannot deliver change.

The ALRC must take this opportunity to help complete the promise of Mabo. This includes confronting the fact that social justice was never delivered and that the future of the native title system depends on addressing that historical omission.

9. Conclusion

BJNAC welcomes the opportunity to contribute to the ALRC's review of the future acts regime. This submission has outlined the urgent need for reform that centres cultural authority, self-determination, and equitable engagement in all aspects of land use and native title processes.

BJNAC's experience demonstrates that while native title recognition is a critical milestone, it remains insufficient without the structural support, legal reform, and resourcing necessary to realise its full potential. The current regime too often prioritises administrative convenience and development certainty over the rights, responsibilities, and aspirations of Traditional Owners.

We urge the ALRC to recommend a future acts framework that:

- Replaces coercive mechanisms like section 24JAA with negotiated, consent based agreements;
- Ensures fair and transparent compensation that reflects both cultural and economic loss;
- Provides long term, scalable resourcing to enable PBCs to fulfil their statutory and cultural responsibilities;
- Recognises cultural heritage as a living system of law, not a secondary consideration;
- Streamlines tenure reform to unlock the economic and cultural potential of native title land; and
- Implement the long overdue social justice package as a core pillar of native title reform, to address historical injustice, enable structural change, and restore self-determination for Traditional Owners.

BJNAC stands ready to lead. With the right tools, support, and recognition, we can move from procedural compliance to genuine partnership, where Traditional Owners are not just consulted, but empowered to shape the future of their Country.