



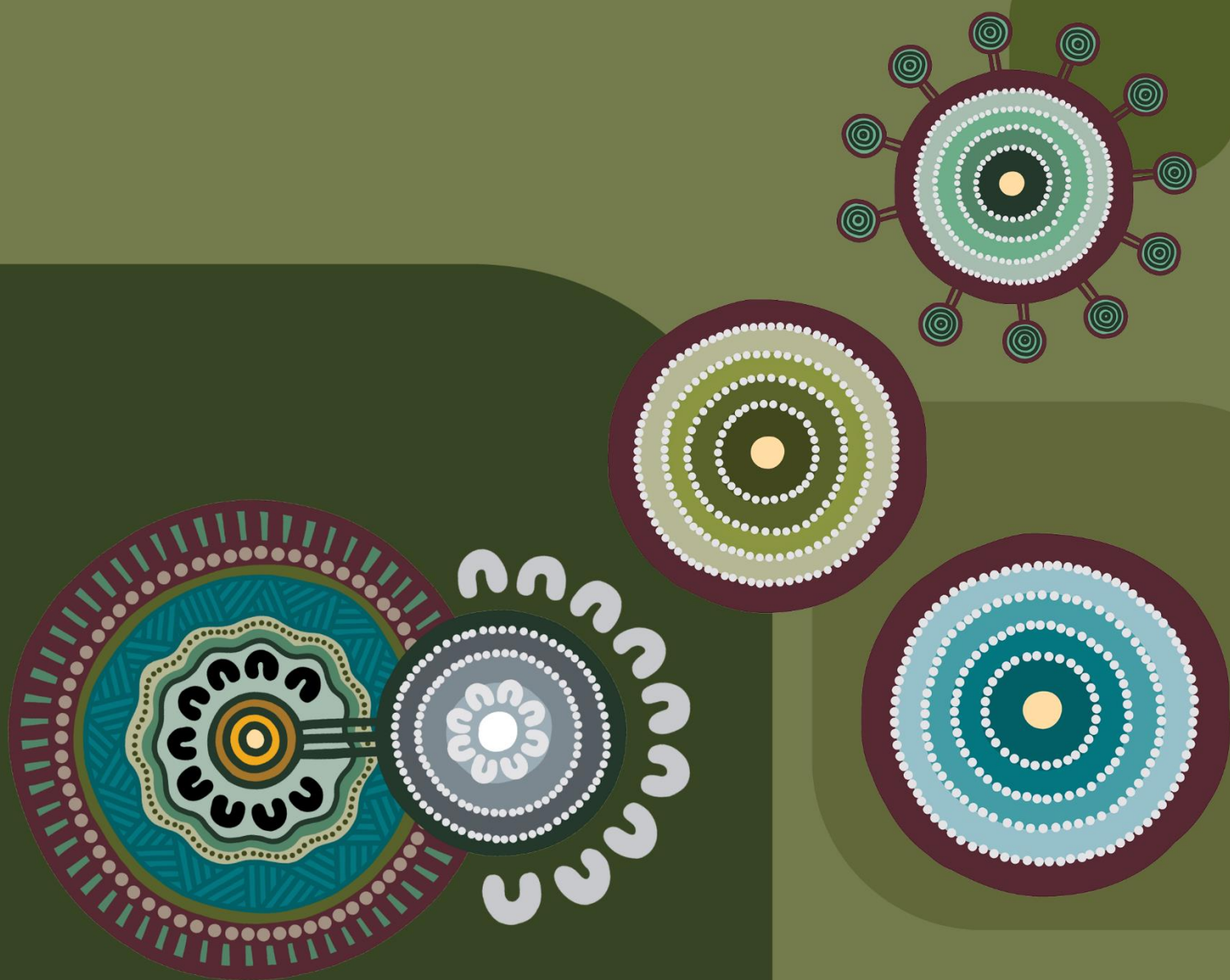
Australian Government
Department of Agriculture,
Fisheries and Forestry

Australian Law Reform Commission

Response to Discussion Paper Review of the Future Acts regime of the *Native Title Act 1993 (Cth)*

Submission from the Australian Government Department of Agriculture, Fisheries and Forestry

July 2025



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Acknowledgement of Country

We acknowledge the continuous connection of First Nations Traditional Owners and Custodians to the lands, seas and waters of Australia. We recognise their care for and cultivation of Country. We pay respect to Elders past and present, and recognise their knowledge and contribution to the productivity, innovation and sustainability of Australia's agriculture, fisheries and forestry industries.

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Introduction

The Department of Agriculture, Fisheries and Forestry (the department) welcomes the opportunity to provide the Australian Law Reform Commission (ALRC) with this submission in response to the ALRC's *Review of the Future Acts Regime: Discussion Paper* (Discussion Paper).

The department's vision is to drive a more sustainable and prosperous Australia through biosecurity, agricultural production and trade, by working together to safeguard and grow a sustainable agriculture, fisheries and forestry sector for all Australians. We support sector growth by assisting Australia's agriculture sector to be increasingly productive and internationally competitive. This includes leveraging opportunities to bring more Country into production, supporting new entrants to gain market access, and harnessing commercial opportunities for emerging products such as bushfoods¹. We support sector resilience and sustainability through initiatives that enable agriculture, fisheries and forestry practices to contribute to a healthy, sustainable and low-emissions environment. This includes using Indigenous knowledges to inform land and sea management practices that balance productivity with sustainability. We strengthen Australia's national biosecurity system by employing a risk-based approach to protect Country, the economy and people from potentially devastating weeds, pests and diseases. This includes delivering the highly successful Indigenous Biosecurity Ranger Program across Australia's northern frontier.

Consistent with this portfolio's remit, the department's previous submission supported commercial growth in agriculture, fisheries and forestry, as well as sector resilience and sustainability, especially where it aligned with whole of government priorities and First Nations outcomes. This submission builds on the previous submission, and responds to questions 7, 10, 12, 13 in the Discussion Paper. In developing this response, the department has considered submissions of other stakeholders in response to the Issues Paper.

The legislative intent of the future acts regime as summarised in the Discussion Paper is to 'ensure native title rights and interests are recognised and protected'.² To achieve these objectives, proposed reforms should seek to improve engagement between native title holders and proponents of future acts, and provide greater opportunities for joint ventures and partnerships between Indigenous and non-Indigenous proponents for commercial projects, proposals, and economic opportunities.

¹ Departmental expenditure on grants to support First Nations economic advancement currently includes \$9 million (Capacity-Building Grants Round) and \$2.5 million (Small Grants) under the Climate-Smart Agriculture Program, \$0.47 million to Northern Australia Aboriginal Kakadu Plum Alliance for the Agricultural Traceability Grants: Traceability Grants Program Round 3 alongside the NAAKPA Indigenous Bushfoods Provenance and Traceability Project and \$9.66 million for the Accelerate Adoption of Wood Processing Innovation Program (First Nations businesses)

² Australian Law Reform Commission, *Review of the Future Acts Regime: Discussion Paper 2025*

1 Accessibility and Agreement Making

Addressed in this section:

Question 12 - Should some terms of native title agreements be published on a publicly accessible opt-in register, with the option to redact and de-identify certain details?

Question 13 - What reforms, if any, should be made in respect of agreements entered into before a native title determination is made, in recognition of the possibility that the ultimately determined native title holders may be different to the native title parties to a pre-determination agreement?

The proposed approach – to ‘opt-in’ rather than ‘opt-out’, and to ‘de-identify’ information – is consistent with principles of Free, Prior and Informed Consent (FPIC), Indigenous Cultural and Intellectual Property (ICIP) and Indigenous Data Sovereignty (IDS). These principles of transparency act to improve efficacy of engagement and aim to engage the objective of the future acts regime and the *Native Title Act 1993 (Cth)* (NTA). This would encourage transparency within the agreement making process, support the achievement of the National Agreement on Closing the Gap Priority Reform 4: Shared access to data and information at a regional level³, and further aid the implementation of the APS Integrity framework⁴.

The department recognises that the agreement making process is imbalanced in various ways. This imbalance is highlighted in part, in the form of agreements made pre-determination versus post-determination of native title, as native title holders have access to voluntary forms of agreement under the NTA. Departmental stakeholders, including the National Farmers’ Federation (NFF) also identified in their submission⁵, imbalances during the development and management of Indigenous Land Use Agreements (ILUAs).

Greater transparency throughout the agreement making process would improve engagement and offer greater opportunities for joint ventures and partnerships. Along with mandated content standards (addressed in Section 2), allowing public access to current and previous agreements and other relevant information would enable consistency, efficacy and equity throughout the agreement-making process. Increasing transparency of compensation amounts would also improve engagement and support greater self-determination through allowing exploration of various compensation options ahead of entering into an agreement. As part of the public opt-in register, compensation amounts, calculations and records could be provided to mitigate issues regarding equitable access to compensation. Relevant reforms could include ensuring agreements and agreement making practices are balanced both fiscally, and around information management and accessibility.

The department notes that there are risks associated with promoting publicly accessible data that may cause misalignment with FPIC, ICIP and IDS principles. For example, limitations to withdrawing consent, automation and generation of agreements without undertaking necessary engagement, and control of the data of native title holders within the register. With the increasing use of new

³ Coalition of Peaks, *National Agreement on Closing the Gap*, July 2020

⁴ Australian Public Service Commission, *Strengthening Integrity in the APS*, June 2025

⁵ National Farmers Federation, *Recommendation on Scope of ALRC Review of the Future Acts Regime*, 2025

technologies including Artificial Intelligence, the management of First Nations data must be a subject of careful consideration. There may also be cultural ramifications including naming conventions after the passing of community members. As such, any data that is made publicly available must be considered, and the access to it controlled through the register system. The ability of the register to improve the agreement making process is heavily dependent on effective implementation including mitigation of these risks. While publicly available data will assist proponents in identifying relevant parties and initiating contact, the system must be maintained in such a way as does not breach cultural protocols and allows self-determination in the availability of data.

1.1 Stakeholders are seeking increased transparency in agreement making

The imbalance between native title holders and proponents of a future act lies in the complexity of the regime, limited consequences for non-compliance, barriers to accessing relevant information, compensation discrepancies and barriers to funding. These imbalances are exacerbated when agreements are made prior to determination of native title, as previously held agreements may not apply to the subsequently determined native title holders. As a result, the previous proponents of the agreement may be left to bear the costs of enacting an agreement from which they no longer derive benefit. These imbalances would be reduced by applying a transparent approach to the future acts regime from the outset of agreement making, as well as developing and mandating content standards.

The overall complexity of the future acts regime was identified as a key issue in the Discussion Paper⁶. Notably the Kimberley Land Council's (KLC) submission⁷ outlines that due to these complexities, there is a realised lack of accountability on governments and proponents. This is further compounded by the lack of clear consequences for procedural non-compliance, which unfairly skews the agreement making process. If there are no consequences outlined in the agreement in the event a party is deemed non-compliant, this leaves the agreement open to misuse by parties.⁸

The NFF indicated concerns around imbalances within agreement making during negotiations. It outlined that members have significant difficulties in identifying appropriate native title holder entities with which to engage.⁹ The NFF therefore encouraged reforms which 'consider mechanisms that ensure equitable support for all parties, fostering fairer and more transparent negotiations'¹⁰. This submission also raised clear disparities during negotiations, where NFF members indicated that they bear substantial costs to participate in negotiations, compared to native title holders that receive government funded support.

⁶ Australian Law Reform Commission, *Review of the Future Acts Regime: Discussion Paper 2025*

⁷ Kimberley Land Council Submission to ALRC Review into Future acts Regime submission 26

⁸ Ibid.

⁹ National Farmers Federation, *Recommendation on Scope of ALRC Review of the Future Acts Regime*, 2025

¹⁰ Ibid.

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The KLC also identified resourcing as a barrier to meaningful participation in negotiations, as well as limitations to the current right to negotiate. The current regime creates structural barriers to enforcement and exercise of native title rights and interests, ultimately skewing decisions in the favour of proponents. The KLC stated that the high proportion of determinations in favour of the act being done, or being done subject to conditions, increases pressure on native title holders to reach agreements as to the doing of the act¹¹. The extra pressure on reaching an agreement creates even further imbalance due to limited resourcing and lack of access to relevant information for all parties to the agreement.

The department's previous submission to the ALRC Issues Paper discussed how to enhance the long-term viability of ILUAs by addressing current power imbalances through greater regulation and guidance on content and restrictions¹². Developing an assessment mechanism to determine the validity and sustainability of ILUAs would help to address these imbalances. The department's suggestion of further content guidance, regulatory inclusions and an assessment mechanism would alleviate NFF's concerns and align with the development of public databases and overall, a more transparent approach to agreement making.

As presented during the Prescribed Body Corporate (PBC) discussion at the 2025 AIATSIS Summit, PBCs are operating to high expectations with limited resourcing. As of March 2025, there were 285 active PBCs of which 43.9% have no paid staff. When applying for funding, there was an average of 8.4 staff employed by a PBC and it took on average, 3 years before receiving Capacity Building Funding¹³. PBCs consider these limitations cause undue stress and burden as they are still required to undertake their responsibilities and obligations¹⁴. By reducing barriers to accessing compensation and funding, PBCs would be able to work more efficiently and employ additional staff. The Self-Determination Fund is a good example of how funding can be distributed to First Nations peoples and communities. It is structured and intended to 'build wealth prosperity, now and in the future'.¹⁵ More efficient and effective PBCs would foster better relationships with proponents and overall, create more durable agreements.

The department acknowledges that supporting infrastructure would be required to develop and embed the proposed register. Funding for a secure and accessible data management system, as well as developing strong guidance and information on the implementation of the register would be important for its effective delivery. A publicly accessible register, whilst allowing greater transparency, may be open to misuse if strong guidance and education is not developed. There is a risk of improving the NTA process to the point of approval without appropriate oversight, which could encroach on the FPIC principles.

¹¹ Kimberley Land Council, *Submission to the Australian Law Reform Commission*, 2025,

¹² Department of Agriculture, Fisheries and Forestry, *Review of the future acts regime of the Native Title Act 1993 (Cth)*, 2025

¹³ National Native Title Council, *Prescribed Body Corporate Presentation*, AIATSIS Summit, 2025

¹⁴ ss 57-58, *National Native Title Act 1993 (Cth)*

¹⁵ Self-Determination Fund, accessed July 2025, <https://www.selfdeterminationfund.org.au/>

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To ensure proper alignment to the principles of FPIC, ICIP and IDS, the register would need to be culturally responsive, ensuring Indigenous peoples are partners in the creation, collection, storage and disaggregation of data available on the register. During development, consideration of the right to withdraw consent (a key element of the FPIC principles) and how the system would need to be created to allow this functionality is imperative.

2 Administrative Burden and Mandated Conduct Standards

Addressed in this section:

Question 7 - Should the Native Title Act 1993 (Cth) be amended to provide for mandatory conduct standards applicable to negotiations and content standards for agreements, and if so, what should those standards be?

Question 10 - Should the Native Title Act 1993 (Cth) be amended to allow parties to agreements to negotiate specified amendments without needing to undergo the registration process again, and if so, what types of amendments should be permissible?

Many submissions to the Issues Paper identified administrative burden as a significant issue affecting all parties involved in proposed future acts. Mandating standards and providing guidelines, publicising registers and records of agreements would help to mitigate these administrative burdens. Care would need to be taken when implementing any standards to mitigate risks of adverse effects and increased administrative burden.

Amendments to allow parties to negotiate specified amendments without requiring re-authorisation or re-registration would assist native title holders to advocate directly with proponents and avoid additional administrative burden for proponents. Minimising the administrative burden of the agreement making process would also allow greater identification of the potential outcomes of the agreement, providing further opportunities to build genuine partnerships and develop joint ventures. This in turn would lead to greater economic self-determination and diversification on native title land, and growth within the agriculture, fisheries and forestry sectors.

2.1 Legal standards can burden negotiations but should not prevent agreement making

The department is supportive of amendments that would allow parties to negotiate specified amendments assisting native title holders to advocate directly with proponents because this would align with efficiency and support self-determination. We also recognise that relationships are the foundation of agreement making, and that these proposed amendments would reduce the administrative burden for proponents. In line with our previous submission to this inquiry and to the Joint Standing Committee into Aboriginal and Torres Strait Islander Affairs (JSCATSIA) 'inquiry into self-determination and opportunities for First Nations report',¹⁶ the department is concerned about burdening both proponents and native title holders. Generally, barriers to economic opportunities for First Nations proponents are detrimental to broader economic and industry growth.

¹⁶ JSCATSIA 2024, Inquiry into economic self-determination and opportunities for First Nations Australians report, Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, November 2024

Possible amendments to the NTA could offer chances to build on sector growth, in line with Ag2030.¹⁷ It would also serve to empower First Nations communities, as the NTA is a unique piece of legislation that brings together common law and First Nations laws. At this intersection, specifically in the agriculture, fisheries and forestry sector, exists a combination of Western and Indigenous knowledges that build strength and resilience, and allow for the achievement of outcomes¹⁸. Utilising native title to empower greater economic self-determination for First Nations peoples holds many possibilities for growth within the sector.

The department recommends the following amendments be permissible without undergoing the registration process again: amendments that lie within the same industry type as the originally registered project; amendments that positively contribute to national or global issues, or if shown to enhance productivity, industry growth or increased efficiency. Where changes may positively contribute to national or global issues, relieving restriction and administrative burden by allowing amendments (such as those relating to climate action, innovation or sustainability) would support commitments such as Net Zero 2050. The proposed amendment could be allowed if it is shown to be aligned to whole of government frameworks or climate initiatives that fall under certain emissions reduction incentives, such as the Australian Carbon Credit Unit scheme (ACCU) or Renewable Energy Target scheme (RET). Additionally, the proposed amendment could be allowed if it is shown to enhance productivity, foster industry growth, or increase efficiency.

Allowing amendments to be negotiated by parties without having to undergo a separate registration process, could build on the existing work of proponents, native title holders, and industry relating to sustainability and innovation. The NTA should not impede or hinder progress, and in line with its objectives, would truly establish future dealings and the standard for those dealings. The NTA should be used to facilitate and leverage opportunities, aiding the achievement of outcomes.

2.2 Mandatory conduct standards would support a balance of power and benefit sharing

The current confidentiality of ILUA's and other related information prohibits a deeper understanding of rights, entitlements and functionality of the NTA for both proponents and native title holders alike, often requiring previous experience with this process to be able to navigate the system.

Mandatory conduct standards should be applicable to negotiations, and contents standards applicable to agreements. These would make the processes clearer and more streamlined for both proponents and native title holders. Mandated engagement, consent, and content standards would level the playing field and keep agreements consistent. It would also relieve administrative burden on all parties, including the National Native Title Tribunal, when reviewing agreements.

Prescribed conduct standards would support a better balance of power. In the agricultural sector, the dairy code of conduct is a mandatory industry code imposing minimum standards of conduct on

¹⁷ National Farmers Federation, *2030 Roadmap*, 2019

¹⁸ Department of Agriculture, Fisheries and Forestry, First Nations Artwork Story, *Protecting our Country, Growing our Future*, 2024, <https://www.agriculture.gov.au/about/news/first-nations-artwork>

processors and dairy farmers¹⁹. This code aims to improve clarity and transparency of trade.²⁰ Similarly, mandatory standards under the future acts regime could act to incentivise efficiency of negotiations, through providing guidance through an unclear and unbalanced system. Additionally, embedded mechanisms, such as those within the dairy code of conduct, would support a better balance of power and benefit sharing. Embedded mechanisms that empower parties, including training, transparency of resources and compensation calculations, and gazetted guidance updated as required, would be desirable. Having simplified, clear and equitable standards will alleviate obstacles to negotiation and ensure clarity from the outset of the process for all parties. Such mechanisms align with international principles of FPIC and ICIP as set out in the objective of the NTA.

The PBC website outlines that there are available opportunities for PBCs to work alongside commercial entities to generate alternative income, thereby recognising that many native title bodies are constrained by their lack of funding. 'If [a] Native Title holder [has] capacity, [they] may be able to enter into joint ventures and partnerships with other parties'²¹. The creation of mandated conduct would address the present power imbalance and empower all parties to negotiate funding. It would also support PBCs to move out of a reactive space to a more proactive management space²². The department supports mandated conduct standards of good faith negotiations, while ensuring that all agreements comply with the proposed future acts regime code of conduct. Additional funding would be required to enforce any breaches of the mandated standards or code of conduct, and these standards should be freely available and accessible to all parties and proponents.

As identified in our previous submission to the ALRC²³, compensation discrepancies and barriers to access, present further challenges to reaching agreements. Allowing for greater financial transparency of calculation methods would alleviate sticking points throughout the development of an agreement including during negotiation.

The reforms addressed in this submission and the effective implementation of them, would prove beneficial for the agriculture, fisheries and forestry sector by promoting industry growth, economic inclusion and self-determination for native title holders, and equity and efficacy for proponents. The department once again appreciates the opportunity to respond to the Issues Paper and the Discussion Paper and looks forward to publication of the ALRC's recommendations from this inquiry.

¹⁹ Australian Competition and Consumer Commission, *Dairy Code of Conduct*, 2025

²⁰ Ibid.

²¹ Prescribed Body Corporate Website, *Commercial and Community Development*, accessed June 2025
<https://nativetitle.org.au/learn/role-and-function-pbc/commercial-and-community-development>

²² AIATSIS *Review of the future acts regime* presentation, Australian Law Reform Commission, 2025

²³ Department of Agriculture, Fisheries and Forestry, *Review of the future acts regime of the Native Title Act 1993 (Cth)*, 2025

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