

10 July 2025

Australian Law Reform Commission

Email: nativetitle@alrc.gov.au

Re: Submission to the ALRC Review of the Future Acts Regime: Discussion Paper (2025)

The Northern Territory Pastoral Land Board (the Board) is pleased to have an opportunity to respond to the ALRC discussion paper "Review of the Future Acts Regime (2025)".

The Board is a statutory authority established under the *Pastoral Land Act 1992* (NT) (the Act). The Act provides the framework for the sustainable use and management of pastoral leases in the Northern Territory, and the Board plays a key role in overseeing the condition and use of pastoral land to ensure that it is managed in an ecologically sustainable manner.

The Board is constituted by members appointed by the Minister for Agriculture and Fisheries, including a Chairperson and individuals with expertise in areas such as land management, pastoral production, ecology, and public administration. One member was appointed with regard to experience with native title matters in the NT. The composition is intended to ensure a balance of technical, environmental, and industry perspectives, and proper consideration of native title and Aboriginal cultural issues.

Through its functions, the Board supports responsible land stewardship, contributes to land use planning, and helps ensure that pastoral leases are used productively without causing long-term harm to the Territory's rangelands.

One of the key regulatory functions of the Board is to assess and determine applications for land clearing on pastoral leases. Under the *Pastoral Land Act 1992*, leaseholders must obtain approval from the Board before undertaking any clearing of native vegetation for purposes such as pasture development or infrastructure. In considering an application, the Board evaluates a range of factors including the proposed use of the land, potential impacts on soil, biodiversity, native title, Aboriginal cultural issues and water resources, as well as alignment with land capability and sustainable land management principles.

The Board may seek advice from relevant government agencies or independent experts and can impose conditions to ensure that clearing activities do not result in long-term degradation of the land. This approval process is a critical mechanism for balancing economic development with the protection of the NT's rangeland ecosystems and native title and Aboriginal cultural interests.

The Board notes that almost all pastoral leases in the NT coexist with non-exclusive native title, and that all pastoral leases contain a statutory reservation in favour of Aboriginal people, which provides a statutory right of access to pastoral leases in addition to non-exclusive native title.

The Board has a focus on the importance of making prompt decisions, particularly in respect of matters such as land clearing approvals and non-pastoral use approvals, which can be time critical when developments are proposed on pastoral lease land. The Board continually reviews our decision-making processes to ensure that they are as efficient as possible, while ensuring that proper consideration is given to each application.

Some of the proposals in the discussion paper, particularly the proposal for Native Title Management Plans, and the proposed change to how future acts are categorised and the processes for the categories (including reforming the right to negotiate) seek to modify the principles established by the High Court in the 1996 Wik case, and which are reflected in the current native title future act processes. In particular, the recognition by the High Court that if a conflict arises between coexisting pastoral rights and native title rights, the rights granted under the pastoral lease will prevail to the extent of any inconsistency.

Of particular concern is example 7 of the examples contained in the paper, where the current procedural right of notice and an opportunity to comment for a proposal for land clearing on 400 hectares of non-exclusive pastoral lease would change to a procedural “right to negotiate” under the newly proposed impact-based procedural requirements. The Board does not support this proposed change.

In the NT, where only a very small proportion of native vegetation has been cleared, and our economy is a developing economy where the stock of development land outside of cities and towns is primarily pastoral land, a 400 hectare land clearing application is relatively routine and is not considered substantial. For land clearing applications, the current procedural rights provide an adequate opportunity for native title interests to be taken into consideration as part of decision making and provide certainty of process for all parties.

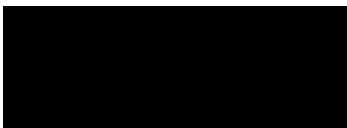
The current arrangements incentivise applicants to focus on flat and featureless land, and to avoid the areas most likely to have cultural and other significance to native title holders and other Aboriginal interests.

The regime for protection of sacred sites in the NT under the *Northern Territory Aboriginal Sacred Sites Act 1989* is very robust, and, where it is considered appropriate and necessary, the Board will include as a condition precedent to a land clearing approbation that a sacred sites clearance certificate is obtained.

The additional time and cost burdens for a pastoral lessee of having to comply with the right to negotiate processes would mean that many small and medium development opportunities on pastoral leases become unviable before they commence. The added requirement of the right to negotiate process will also place additional burdens on Land Councils, Prescribed Bodies Corporate and native title holders. Additionally, shifting to a right to negotiate framework would likely lead to increased time between when applications are first made and the final decision.

Please contact me at pastorallandboard@nt.gov.au if you require any further information about the Board's submission.

Yours sincerely



Paul Burke
Chairperson