

10 July 2025

Commissioner Tony McAvoy
Australian Law Reform Commission
Via email: nativetitle@alrc.gov.au

Dear Commissioner

Re: Review of the Future Act Regime – Discussion Paper

Thank you for the opportunity to provide a response to the discussion paper on the *Native Title Act 1993* (Cth) (NTA) future acts regime. This review presents a significant opportunity to modernise the future acts regime, and to ensure it better reflects the needs and aspirations of traditional owners and to enable access to a system to protect and enforce their native title rights.

The ILSC supports reforms that promote First Nations self-determination and economic self-determination, strengthening the ability to Care for Country, and to enhance the protection of cultural heritage. The ILSC is supportive of the ALRC's proposals that enhance the agency of native title holders and prescribed bodies corporate (PBCs), streamline procedural fairness, and ensure equitable participation in decision-making processes. In particular, we support proposals that:

- strengthen the negotiation rights of native title parties;
- improve the transparency and accountability of agreements;
- recognise and support the economic aspirations of First Nations peoples;
- ensure cultural heritage is protected in all future acts processes.

This submission is heavily influenced by the findings of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs report on the Inquiry into economic self-determination and opportunities for First Nations Australians, which emphasises the importance of First Nations governance and economic participation. Similarly, the *Murru waaruu* (On Track) Economic Development Seminar Series Outcomes Report identifies access to capital, capacity building, and equitable participation in land use agreements as critical enablers of Indigenous economic development.

The ILSC also wishes to endorse and recognise the positions and expertise expressed in response to the ALRC's Issues Paper from the National Native Title Council, the Central Land Council, the First Nations Clean Energy Network and the First Nations Heritage Protection Alliance.

1. The ILSC

The ILSC is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cth), first commencing as the Indigenous Land Corporation on 1 June 1995. It was established by the *Aboriginal and Torres Strait Islander Act 2005* (Cth) in response to the Mabo judgement and as such complements the NTA in recognition of common law native title rights to land.

The ILSC acts as a strategic funder and facilitator, supporting First Nations people to access, use, and Care for Country on their own terms to achieve their aspirations; supports First Nations people to leverage, and continue to grow, their assets and rights to land and water, extend beyond grant-making and enable First Nations groups to take advantage of opportunities that optimise the use and Care of Country now and into the future; and improve our service to First Nations people and continue our efforts to return power and control to First Nations communities by divesting our operating businesses and landholdings.

2. ILSC's role as a default agent Prescribed Body Corporate

In the rare event a PBC is not nominated by native title holders, the Native Title Act allows for the ILSC to be appointed by the Federal Court to operate as a default agent PBC.

In these circumstances the ILSC operates as a PBC for an initial five-year period or until such time native title holders are ready to establish a PBC. In the event it is appointed PBC, its focus will be on meeting its statutory PBC functions under the Act while working with native title holders to transfer these responsibilities to a PBC of their choosing. The ILSC strongly advocates for self-determination.

The role has been invoked only once since inception of the ILSC. From July 2022 the ILSC is acting as an agent PBC for the Birriman-gan native title holders of the Kimberley region, WA.

3. Feedback

Comments relating to part 3 – Guiding objectives and principles

The ILSC supports the objectives and principles outlined in Part 3 of the Discussion Paper, which reaffirm the original intent of the NTA to recognise, protect, and enable the full enjoyment of native title rights and interests. The future acts regime must evolve from a procedural framework into a mechanism that actively supports Indigenous self-determination. This includes ensuring native title holders can meaningfully influence decisions affecting their Country, consistent with their traditional laws and customs.

The ILSC emphasises that the future acts regime is central to economic self-determination. First Nations peoples view Country as a foundation of identity, community, and cultural obligation, but also as a source of economic opportunity. Opportunities for economic development enabled under the future acts regime must therefore be pursued in ways that respect and strengthen these connections. The future acts regime must safeguard native title from incursion and actively enable Indigenous land management practices. These practices, rooted in millennia of knowledge, are essential for biodiversity conservation, climate resilience, and sustainable land stewardship, benefiting all Australians.

The ILSC supports the call for the future acts regime to uphold human rights principles, including equality before the law (paragraphs 43–45). Native title rights must be recognised as a distinct and equal form of property. The regime must also serve as a robust framework for protecting cultural heritage, acknowledging that any act affecting Country can have irreversible impacts on cultural identity and practices. As outlined in paragraphs 46–47, native title holders must be equipped with the resources and expertise necessary to participate meaningfully in all processes, ensuring that cultural heritage is respected, protected, and preserved for future generations.

Comments relating to part 4 – Native Title Management Plans

The ILSC supports in principle that the NTA be amended to enable PBCs to develop management plans (subject to a registration process) that provide alternative procedures for how future acts can be validated in the relevant determined area. This support is provided with the caveat that PBCs are provided with the necessary funding to develop and periodically update the proposed Native Title Management Plans (NTMP).

The ability for native title holders to proactively set tailored future acts processes within their determined areas, independent of direct government agreement, represents a crucial shift towards genuine autonomy. It is also largely consistent with the principles of Multi-Objective Land Allocation (MOLA) articulated in the *Murru waaruu* (On Track) Economic Development Seminar Series Outcomes Report regarding First Nations-led planning and the effective leveraging of their extensive land estate.

NTMPs present a vital mechanism for native title holders to exercise their inherent right to Care for Country in a manner that aligns with their cultural obligations and aspirations. By allowing PBCs to prescribe more robust or streamlined processes for future acts, NTMPs empower Traditional Owners to protect culturally significant areas and apply their deep ecological knowledge to land management. This proactive approach to land use planning, much like the MOLA analysis advocated in the *Murru waaruu* report, enables the integration of cultural values with potential economic opportunities, ensuring that development is culturally appropriate and sustainable. This shift from a reactive engagement model to a proactive, Indigenous-led framework is essential for meaningful protection of cultural heritage.

Beyond cultural and environmental benefits, NTMPs hold immense potential for supporting economic self-determination. The proposal for NTMPs to signal development opportunities that native title holders are interested in pursuing, and to set minimum payments for future acts, directly addresses the need to unlock economic value from the Indigenous Estate. This aligns with the *Murru waaruu* report's call for reform to better realise economic opportunities from native title, moving away from a system that historically constrained economic use. By providing clarity and certainty to both native title holders and proponents, NTMPs can de-risk investment, and enable native title holders to become leading partners in development on their lands.

The ILSC emphasises that adequate resourcing for the development, registration, review, and updating of NTMPs will be critical to their success. Without dedicated external funding, the burden on PBCs, who often face significant capacity constraints, could undermine the intent of this reform. Furthermore, the registration process for NTMPs should be efficient and supportive, ensuring that these plans genuinely empower native title holders without introducing unnecessary bureaucratic hurdles.

Comments relating to part 5 – Promoting fair and equitable agreements

The ILSC is supportive of embedding mandatory conduct and content standards in agreement-making processes (Question 7, paragraphs 74–89) to address systemic power imbalances, and ensuring that agreements reflect FPIC principles. Agreements under the future acts regime must go beyond mitigating impacts to actively enable Indigenous-led development, including co-ownership, profit-sharing, and long-term benefit structures. These measures are critical to enabling native title holders to leverage their rights for sustainable economic outcomes, particularly in emerging sectors such as clean energy and critical minerals, as highlighted in the *Murru waaruu* (On Track) Economic Development Seminar Series Outcomes Report.

Agreements must also reflect the cultural and legal responsibilities of Caring for Country. We support proposals to embed cultural heritage protections within agreement content standards (paragraph 86), ensuring that native title holders retain the right to manage and safeguard significant sites. As noted by the National Native Title Council and others, the current regime often fails to protect cultural heritage where the right to negotiate is not available. Embedding cultural heritage standards will help ensure that development is culturally appropriate and environmentally sustainable.

The ILSC also supports reforms to improve transparency and accessibility in agreement-making. We endorse Proposal 2 to ensure PBCs have automatic access to agreements affecting their determination areas and support the use of standing instructions for low-impact acts (Proposal 1). We also support the establishment of public registers for agreement terms on an opt-in basis (Question 12), which would enhance accountability and support intergenerational governance.

Adequate resourcing for PBCs is critical to enable to operationalisation of these proposed reforms. As detailed at length in the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into Economic Self-Determination, PBCs are chronically underfunded, severely limiting their capacity to adhere to their statutory obligations, let alone engage in agreement-making.

The Joint Standing Committee recommendation 10 states that, on completion of the Australian Law Reform Commission Future Acts Regime Review, the Australian Government should consider whether a full review of the NTA is required. This ILSC is supportive of this recommendation, noting that at the time of writing, the government has not provided a written response to the Inquiry's recommendations.

Comments relating to part 6 - Reshaping the statutory procedures

The ILSC supports the proposed shift to an impact-based model for determining procedural rights (Proposal 6), which better aligns with the principles of self-determination. The proposed impact-based model categorising acts based on their scale, duration, intensity, and cultural or environmental sensitivity would empower native title holders to exercise greater authority over decisions affecting their Country.

The ILSC strongly supports the ALRC's recognition of the significance of water to native title holders (paragraphs 184–189). The current procedural rights under s 24HA, limited to notice and comment, are inadequate given the potentially far-reaching and interlinked impacts of water-related future acts. The ILSC also supports the proposal to ensure that procedural rights extend to areas beyond the immediate footprint of a future act, particularly where water systems are interconnected across Country. This is consistent with the ILSC's mandate to support sustainable land and water management and reflects the responsibilities of native title holders to Care for Country.

The proposed model also provides a more responsive framework for engaging with new and emerging industries, including renewable energy, carbon markets, and cultural tourism (paragraphs 180–183). These sectors offer significant opportunities for First Nations-led economic development, as highlighted in the *Murru waaruu* (On Track) Economic Development Seminar Series Outcomes Report. Embedding free, prior and informed consent (FPIC) and agreement-making as central features of the regime would ensure that native title holders are not only consulted but are active participants and beneficiaries in Australia's clean energy transition.

Comments relating to part 7 - Compensation and other payments

The ILSC supports the ALRC's proposals in Part 7 of the Discussion Paper to reform the compensation and payments framework under the NTA. These reforms are essential to realising self-determination and ensuring that native title holders are not only recognised as rights-holders but are also empowered to negotiate and receive fair, timely, and culturally appropriate outcomes for the use and impact on their Country.

Many PBCs lack the resources to pursue compensation claims through the Federal Court. The ILSC supports the introduction of simpler, agreement-based mechanisms, supported by standing instructions and streamlined processes to reduce the burden on native title holders and enhance their ability to Care for Country and pursue development on their own terms. As the National Native Title Council has highlighted, strong and capable PBCs are essential to Australia's clean energy transition and broader economic future. A fair and functional compensation regime is a critical part of that foundation.

Caring for Country and protecting cultural heritage must be central to any compensation framework. We echo the Central Land Council's concern in their response to the Issues Paper that the evidentiary burden for demonstrating cultural loss is significant and often only becomes apparent after development has commenced. The current regime misaligns incentives by placing compensation liability solely on the Crown. This removes any obligation on proponents to negotiate fair terms with native title holders and undermines both the integrity of the regime and the ability of native title holders to exercise meaningful control over their lands.

Comments relating to part 8 - Resourcing, costs, and implementation

As outlined in paragraph 296, the ability of native title holders to exercise self-determination through meaningful participation in decision-making, negotiation, and agreement-making, depends on the capacity of PBCs and NTRBs to fulfil their statutory roles.

The ILSC strongly supports Proposal 14, which recommends the establishment of a stand alone perpetual capital fund to provide core operational funding to PBCs. Any PBC perpetual capital fund needs to be modelled on real and possible future scenarios as to be adaptable to changing needs. The ILSC would welcome the opportunity for more detailed consideration around the agency's suitability to administer this fund. We note that this proposal aligns with the ILSC's statutory role under the *Aboriginal and Torres Strait Islander Act 2005* (Cth) as the national agency responsible for supporting the return and management of Country to and by First Nations Australians.

The ILSC acknowledges the longstanding leadership of the National Native Title Council in advocating for such a fund and recommend their continued engagement in the design and administration of any future arrangements.

Should Proposal 14 be adopted by the Australian Government, the ILSC recommends consideration of establishing the fund alongside the Aboriginal and Torres Strait Islander Land and Sea Future Fund, effectively establishing a First Nations PBC Future Fund. This would support long-term returns and underpin the economic wellbeing of First Nations peoples, reflecting their enduring rights and responsibilities in relation to Country. Such a fund would also advance the ILSC's and the Australian Government's shared commitment to First Nations economic self-determination, as highlighted in the *Murru waaruu* (On Track) Economic Development Seminar Series Outcomes Report.

If the ILSC is appointed to deliver the returns generated by the fund, appropriate administrative arrangements must be established to manage funding allocation and potential conflicts of interest, particularly where the ILSC is acting as a default PBC. This may include defining allocation protocols and establishing discrete funding streams to retain the separation of ILSC's PBC support role from its land and water acquisition functions.

The ILSC also supports Proposals 15 to 18, which aim to:

- strengthen the capacity of NTRBs and Native Title Service Providers (Proposal 15),
- ensure the National Native Title Tribunal is adequately resourced to fulfil its expanded role (Proposal 16),
- improve cost recovery mechanisms for native title parties (Proposal 17); and
- establish a First Nations advisory group to guide implementation (Proposal 18).

These reforms are essential to ensuring that native title holders can Care for Country, protect cultural heritage, and participate in development on their own terms. In particular, Proposal 18 (paragraphs 323–325) is critical to ensuring that implementation is grounded in the principles of free, prior, and informed consent, and reflects the aspirations of First Nations communities.

The ILSC reiterates the findings of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into Economic Self-Determination, which recommended that the Australian Government ensure resourcing for PBCs is sufficient to enable delivery of their full legislative potential. The reforms proposed in Part 8 of the Discussion Paper are a necessary step toward achieving that goal.

Comments relating to part 9 - Aboriginal and Torres Strait Islander cultural heritage

As outlined in paragraph 328, cultural heritage is inseparable from native title. It encompasses sacred sites, stories, ceremonies, and obligations that define First Nations peoples' enduring relationship with Country.

The ILSC echoes the National Native Title Council's view that the current disconnect between native title and cultural heritage laws results in fragmented and inadequate protection. The ILSC supports the proposal to embed cultural heritage considerations into NTMPs (paragraph 334) and agree with the National Native Title Council that such reforms must be co-designed with native title holders and supported by adequate resourcing.

We also endorse the First Nations Heritage Protection Alliance's call for the future acts regime to be aligned with the UNDRIP, particularly Articles 18, 19, 25, 31, and 32. As the Alliance notes, the current regime fails to meet the standards of FPIC and does not provide effective redress for cultural harm. Embedding a human rights-based framework into the NTA would ensure that cultural heritage is protected in accordance with international law and First Nations' own governance structures.

The ILSC notes that the Australian Government is working with the First Nations Heritage Protection Alliance on broader reforms to cultural heritage legislation. The ILSC also supports the development of a reform roadmap, as recommended by the National Native Title Council, to ensure that these reforms are implemented in a timely, coordinated, and accountable manner.

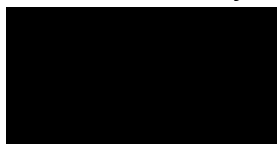
PBCs are not merely governance entities. They are custodians of Country, law, story, and ceremony. Embedding cultural heritage responsibilities into the future acts regime is essential to upholding self-determination, caring for Country, and ensuring that First Nations peoples can protect and maintain their cultural heritage for future generations.

4. Concluding comments

The ILSC supports reforms to the NTA's future acts regime that empower First Nations peoples to exercise self-determination, achieve economic independence, and Care for Country. We urge the Australian Government to adopt proposals that enhance the role of native title holders and PBCs, ensure cultural heritage is safeguarded, and promote fair and equitable outcomes in all future acts processes. We thank the ALRC for the opportunity to contribute to this important review.

Should you or your staff require any further information or detail on the proposals raised in this submission please contact my office directly via Damon Lewis, Manager Policy, at [REDACTED] or on [REDACTED].

Yours sincerely



Joe Morrison
Group Chief Executive Officer