



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

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy and public education.

ANTAR campaigns for the principles of the Uluru Statement from the Heart, including the establishment of a Makarrata Commission to oversee national agreement-making and truth-telling processes, as well as for the self-determination of First Nations Peoples. We actively support state and territory-based voice, treaty and truth-telling.

ANTAR engages in national advocacy across various policy and social justice issues affecting First Nations communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; child safety, development and wellbeing; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with First Nations communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

Introduction

ANTAR thanks the Australian Law Reform Commission for the opportunity to comment on the Review of the Future Acts Regime: Discussion Paper (2025).

ANTAR is a non-partisan advocacy organisation working for treaty, truth, justice, rights and respect for First Nations peoples, with a history of campaigning and advocacy particularly dedicated to securing and furthering First Nations native title and land rights interests. ANTAR was formed in 1997 to defend existing native title rights and promote the opportunities offered by native title for Aboriginal and Torres Strait Islander people to achieve justice, recognition, strengthening of culture and economic opportunity.¹

With respect to the current inquiry, ANTAR is particularly well placed to comment on the opportunity that is currently available to use the review of the Native Title Act's future acts regime as a mechanism for partial implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Australia is a party, which will be the focus of our submission. It is our view that by embedding UNDRIP rights into the future acts regime, the Native Title Act ('the Act') can better fulfil its intention to be a special measure for the advancement of First Nations peoples, and to ensure native title holders are able to fully enjoy their inherent rights and interests.

We note that The National Native Title Council (NNTC) as well as the First Nations Heritage Protection Alliance (FNHPA) – two leading First Nations voices in areas of native title and cultural heritage with considerable expertise and community trust – have submitted to ALRC's future acts inquiry, including by providing considerable detail on how UNDRIP can be incorporated into the future acts regime. We endorse these submissions and ask the Commission to defer to their recommendations in cases of potential contradiction.

¹ ANTAR Submission to the Senate Legal and Constitutional Affairs Legislation Committee: Inquiry into the Native Title Amendment (Reform) Bill 2011 (July 2011): 3.

Summary of Recommendations

1. ANTAR recommends that First Nations peoples' rights as articulated in UNDRIP – and in particular their right to self-determination and to free, prior and informed consent – are explicitly embedded into the Native Title Act and the future acts regime. This can be achieved, at least in part, by inserting an additional object into the Act;
2. In accordance with UNDRIP Articles 3, 19 and 26, native title holders must be free to define and determine their own representative governance models and structures. At a minimum, ANTAR recommends amending the Act to allow Prescribed Body Corporates (PBCs) to operate in less legislatively prescriptive ways, empowering them to adopt culturally responsive business models, as self-determined by First Nations communities in accordance with their own cultural protocols, customs, priorities and decision making processes;
3. ANTAR recommends that Proposal 18 is amended to expressly recognise rights to self-determination (Article 3), to free, prior and informed consent (Articles 19 and 32), and to representative decision-making (Article 18);
4. ANTAR recommends that the right to free, prior and informed consent is explicitly included in the procedural rights extended to native title parties under the Native Title Act for any proposed future acts, irrespective of the type of activity proposed or its impact;
5. ANTAR recommends that Proposal 10 be amended to explicitly embed the right to free, prior and informed consent as part of procedural requirements that must be complied with in order for a future act to be valid;
6. ANTAR recommends the Commonwealth Government establish a PBC Future Fund that would provide annual, secure and sustainable funding for PBCs and other representative institutions.² As far as we can tell, this is articulated in the Discussion Paper's Proposal 14, which we support;
7. ANTAR recommends that if future acts are to be categorised based on the impact they may have on native title rights and interests (as in Proposal 6), the list of factors considered in both categories – against which a proponent measures and categorises the impact of a proposed future act – should be determined in advance by a co-design process with First Nations peoples. This is to ensure that any

² Detailed information on options can be found here <https://cipr.cass.anu.edu.au/research/publications/toward-perpetual-funding-model-native-title-prescribed-bodies-corporate>

determination of impact takes into account First Nations' cosmologies, worldviews and relationships to Country, including a recognition of potential non-material and non-physical effects of proposed future acts, such as spiritual, ancestral, cultural and other intangible effects;

8. Given the expanded role that the Discussion Paper envisions for the National Native Title Tribunal (NNTT) – including Proposal 7 to empower the NNTT to determine issues referred to it by agreement of the negotiation parties and Proposal 16 to offer greater facilitation and mediation support to users of the native title system – it is critical that the NNTT is not only adequately funded, but that it operates in ways that attract wide support from First Nations communities and that are grounded in cultural protocol. ANTAR endorses NNTC's prior recommendation that the Treaty Authority in Victoria be considered a model of how to establish an independent authority with these powers, and encourages the ALRC to amend Proposal 16 to ensure that operation of the NNTT is fair and does not favour the interests of government and resource developers.

Context

When considering reform to the Native Title Act as a special measure for the advancement of First Nations peoples, it is crucial to remember the historical context from which the Act was born. In 1992, the High Court made a landmark decision in the case of *Mabo v. Queensland (No. 2)*, overturning the legal doctrine of *terra nullius*, or land belonging to no one.³

The now historic Mabo decision confirmed in contemporary Australian settler law what First Nations peoples had always known – that they had an enduring connection to Country, that this connection was enacted through pre-existing rights to land and waters based on their traditional laws and customs, and that these laws and customs survived colonisation. In response to this decision, the Australian Parliament passed the Native Title Act to provide a legislative framework for dealing with native title claims and rights. Its stated intent – recognised in its preamble – is to rectify the consequences of past injustices and to ensure that First Nations people receive the full recognition and status to which they aspire.⁴

³ [Case summary: Mabo v Queensland](#), Overturning the doctrine of terra nullius: the Mabo case, AIATSIS, nd.

⁴ [Native Title Act 1993 Preamble](#)

But as many First Nations submitters have pointed out, while the native title system gave First Nations people a legal pathway to recognition, it has not lived up to its promises and is not operating fairly, effectively, or efficiently.⁵ Rather than delivering on its stated intent, the native title system is slow, adversarial, expensive, complex and in many instances harmful and traumatising.⁶ It also places the burden on Aboriginal and Torres Strait Islander peoples, whose native title rights – where they manage to have them recognised at all – often come with conditions or strings attached. In large part, this is due to the fact that the legal pathway native title offers was shaped by the same colonial legal system that has long denied First Nations existence and inherent rights.⁷ Through discriminatory policy and lawmaking, Commonwealth governments have continued this pattern of diluting and undermining First Nations peoples' rights and interests, including with respect to native title. The Howard Government's amendments to the Native Title Act, via the '10 Point Plan', is a glaring example. Prompted by the High Court's Wik decision – which ultimately ruled that in cases of inconsistency between the rights of native title holders and the rights of pastoralists, it is native title holders whose rights must yield – the amendments broadened the power of governments to extinguish native title, introduced measures to make native title claims burdensome and restrictive, and ultimately favoured the rights of miners and pastoralists over First Nations people – a maddening and discriminatory injustice that remains the status quo.⁸

If the native title system is to be significantly transformed in order to live up to its stated intent, it must be designed and shaped by First Nations peoples themselves, in ways that centre and respect their aspirations, rights, and cultural authority concerning their lands, territories, waters and resources. This means that the Act, including the future acts regime, must practically and legally function as a tool of First Nations self-determination, not as an instrument of dispossession. The United Nations Declaration on the Rights of Indigenous Peoples is a practical framework and roadmap to guide and achieve these reforms.

⁵ Discussion Paper (2025): 4.

⁶ Katie Kiss, '[2025 AIATSIS Summit: Voices of Empowerment Strengthening our Future](#)', 5 June 2025.

⁷ Ibid

⁸ Natalie Cromb, '[How did the Wik 10-point plan outline our future?](#)', NITV, 8 May 2017.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

We note that the Discussion Paper acknowledges that the future acts regime should uphold fundamental principles of human rights, and, 'as far as practicable, be consistent with Australia's obligations under international law'.⁹

ANTAR submits that review of and reform to the Native Title future acts regime must go further than demonstrating consistency with human rights principles, and in fact offers a significant opportunity to embed substantive rights that are set out in UNDRIP into federal legislation, thereby acting as a form of partial UNDRIP implementation. While embedding UNDRIP principles into the Act would not fully implement UNDRIP into Australian law, it would constitute a significant step toward incremental implementation of UNDRIP – something that has been consistently asked for by many First Nations individuals and organisations, as well as endorsed by legal experts.

The Castan Centre for Human Rights Law has identified embedding principles of self-determination and FPIC into specific legislation as one of three feasible means for federal enactment of UNDRIP, and identified the Native Title Act as a key piece of legislation requiring urgent attention.¹⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner Katie Kiss has argued that the rights affirmed in the Declaration – especially the right to self-determination and the right to free, prior and informed consent (FPIC) – must be embedded in all aspects of the Native Title system.¹¹ Similarly, The National Native Title Council (NNTC) has long urged the Commonwealth Government to ensure that UNDRIP is incorporated into laws, policies, programs, and institutions that govern the native title process, arguing that native title legislation requires 'urgent reform' to deliver on the minimum standards articulated in UNDRIP.¹² In their submission to ALRC's Review of the Future Acts Regime – Issues Paper, the First Nations Heritage Protection Alliance submitted that 'most of the current provisions of the FAR [future acts regime] do not align with the expectations under UNDRIP'. The Alliance's submission offers a detailed proposal for how UNDRIP rights can be incorporated into the future acts regime.

⁹ Discussion Paper (2025): 9.

¹⁰ Dr Katie O'Bryan, Associate Professor Kate Galloway, Associate Professor Melissa Castan and Scott Walker, Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous peoples, Senate Legal and Constitutional Affairs References Committee, [Castan Centre Submission](#) (June 2022): 1.

¹¹ *ibid*

¹² [National Native Title Council Submission to the Senate Inquiry](#): Application of the United National Declaration on the Rights of Indigenous Peoples in Australia (2022): 4.

International human rights instruments are not vehicles for virtue signalling. Australia's ratification of UNDRIP must be understood as more than a symbolic gesture. Ratification signifies a commitment to implement the Declaration into domestic law, which includes ensuring the consistency of all federal legislation with UNDRIP principles. The handbook for parliamentarians on implementing UNDRIP, published by the InterParliamentary Union and several UN agencies, cites the law-making role of parliaments as of particular importance in implementation, and suggests that legislative review and reform are essential first steps in implementation efforts.¹³

Using the Native Title Act to enact the key principles of UNDRIP is not a new idea. Two years after Australia's 2009 ratification of UNDRIP, Senator Rachel Siewart put forward a Private Members Bill, the Native Title Amendment (Reform) Bill 2011, seeking to amend the Native Title Act in order apply UNDRIP principles to native title decision making. In particular, the Bill proposed to insert an additional object into the Act to acknowledge the central principles in UNDRIP.¹⁴ It also sought to relieve First Nations peoples of the burden to prove their right to native title by adopting a presumption of continuity which could be overturned by 'evidence of significant disruption', thus shifting the burden of proof from the claimants to the respondents to prove disruption.¹⁵

In their submission to the Inquiry into the Native Title Amendment (Reform) Bill 2011, the NNTC endorsed the proposal that the Native Title Act should be amended to enact the key principles of UNDRIP, particularly for the purposes of agreement-making and for access and the use of First Nations land.¹⁶ Similarly, in their 2011 submission, AIATSIS supported embedding UNDRIP into the Act, and reminded the Government of its 'obligation to pursue these principles, including introducing legislative mechanisms to give effect to the rights under the Declaration'.¹⁷

AIATSIS went on to argue that the Native Title amendments in the Bill were 'an opportunity for the Commonwealth to make good on its statements to the world and to our own Indigenous peoples on its commitment to recognise and protect the rights of Indigenous peoples'.¹⁸ It is frankly a disgrace – as well as a show of the weakness of Australia's commitment to UNDRIP – that fourteen years later, significant government,

¹³ [Implementing the UN Declaration on the Rights of Indigenous Peoples](#), Handbook for Parliamentarians, No 23, Inter-Parliamentary Union (2014): 7.

¹⁴ Native Title Amendment (Reform) Bill 2011, [Explanatory Memoranda](#), 2010-2011, Parliament of Australia.

¹⁵ Native Title Amendment (Reform) Bill 2011, [Explanatory Memoranda](#), 2010-2011, Parliament of Australia.

¹⁶ As cited in [National Native Title Council Submission to the Senate Inquiry](#): Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (2022): 4.

¹⁷ AIATSIS Submission to the Inquiry into the Native Title Amendment (Reform) Bill 2011 (August 2011): 1.

¹⁸ Ibid

legal and civil society resources are being utilised to consider these same reforms, and to advance these same arguments urging the Government to make good on its obligations under international law.

Recommendation 1: ANTAR recommends that First Nations peoples' rights as articulated in UNDRIP – and in particular their right to self-determination and to free, prior and informed consent – are explicitly embedded into the Native Title Act and the future acts regime. This can be achieved, in part, by inserting additional objects into the Act in order to:

(a) refer to the United Nations Declaration on the Rights of Indigenous Peoples and provide for principles of the Declaration to be applied in decision-making under the Native Title Act 1993; and

(b) implement reforms to the Native Title Act 1993 to improve the effectiveness of the native title system for Aboriginal peoples and Torres Strait Islanders.

The principles to be applied in decision-making under the *Native Title Act 1993* and the future acts regime must include:

- the right to self-determination (Article 3);
- the right to free, prior and informed consent (Article 29);
- the right to full and direct consultation and participation (Article 18);
- the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, including the right to own, use, develop and control these lands, territories and resources (Article 26);
- the right to adjudication of land disputes (Article 27);
- the right to redress including restitution and compensation for land that has been confiscated or damaged (Article 28(1));
- the right to maintenance, control and protection of cultural heritage (Article 31);
- the right to determine and develop priorities and strategies for the development and use of land, territories and resources (Article 32(1)), and
- the right to non-discrimination (Article 2).

Furthermore, an amendment to the Act should include that:

1. All provisions of the Native Title Act are to be interpreted and applied in a manner that is consistent with the Declaration, and

2. The principles of the Declaration must, in every relevant case, be applied by each person exercising a power or performing a function under this Act.

The right to self-determination

The right to self-determination is widely considered to be the cornerstone of UNDRIP, as the right from which all other rights flow. It is expressly articulated in Article 3, which states:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁹

The right of First Nations peoples to self-determination is also enshrined in Article 1 of both the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights – binding treaties to which Australia is a party. These Articles should be interpreted in light of Article 3 of UNDRIP, which affirms how the right of self-determination applies specifically to First Nations peoples.

Whilst First Nations peoples have continually asserted their right to self-determination since colonisation, its enshrinement in Australian legislation, policy and practice has been extraordinarily slow. Rather than upholding and protecting this right, structural features of the native title system continue to undermine it. As it stands, the Act consistently privileges the rights and interests of industry and government over those of native title parties, entrenching existing power imbalances and perpetuating structural inequalities.

One clear example of this is the treatment of PBCs under the Act. As the NNTC notes, once a native title determination is made, native title holders are compelled to establish a PBC. This action triggers an onerous set of obligations under both the NTA and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).²⁰ Due to inadequate funding and other structural barriers, most PBCs find themselves stuck in a cycle of basic administration and compliance, rather than being free to proactively advance the self-determining aspirations of native title holders.²¹ Furthermore, the

¹⁹ [United Nations Declaration on the Rights of Indigenous Peoples](#), Article 3, United Nations (2007)

²⁰ [National Native Title Council Submission to the Senate Inquiry](#): Application of the United National Declaration on the Rights of Indigenous Peoples in Australia (2022): 4.

²¹ Ibid

extensive legislative obligations facing PBCs are rigid and compliance driven, and impose decision-making and governance structures that do not align with First Nations cultural protocols.²² In this way, the Act operates in direct contravention of First Nations peoples' rights under Article 18 of UNDRIP, which states that Indigenous peoples have the right to maintain and develop their own decision-making institutions. It is also in direct contravention of Article 26(3), which states that legal recognition of First Nations peoples lands and territories – i.e. native title systems – must be conducted in accordance with the customs, traditions and land tenure systems of First Nations peoples and their communities:

States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.²³

Recommendation 2: In accordance with UNDRIP Articles 3, 19 and 26, native title holders must be free to define and determine their own representative governance models and structures. At a minimum, ANTAR recommends amending the Act to allow Prescribed Body Corporates (PBCs) to operate in less legislatively prescriptive ways, empowering them to adopt culturally responsive business models, as self-determined by First Nations communities in accordance with their own cultural protocols, customs, priorities and decision making processes.

Recommendation 3: ANTAR recommends that Proposal 18 is amended to expressly recognise rights to self-determination (Article 3), to free, prior and informed consent (Articles 19 and 32), and to representative decision-making (Article 18).

For example, a revised Proposal 18 could be:

"The Australian Government should support the establishment of a specifically resourced First Nations advisory group to advise on implementing reforms to the Native Title Act 1993 (Cth). The establishment of this advisory group, including nominations for membership, must be representative of broader First Nations communities in accordance with their rights to self-determination, to representation chosen by themselves in accordance with their own procedures, and to free, prior and informed consent".

²² [National Native Title Council Submission to the Senate Inquiry](#): Application of the United National Declaration on the Rights of Indigenous Peoples in Australia (2022): 6.

²³ [United Nations Declaration on the Rights of Indigenous Peoples](#), Article 26, United Nations (2007)

The right to FPIC

The other significant right underpinning UNDRIP is the right to participation in decision-making, expressed as the right to free, prior and informed consent (FPIC) in Article 19, which states:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.²⁴

Furthermore, Article 32(2) requires States to:

...consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

The principle of FPIC is linked to treaty norms, including the right to self-determination affirmed in common Article 1 of the International Human Rights Covenants.²⁵ FPIC is largely a procedural right, articulating the right of First Nations people to participatory processes that are free from coercion, pressure or manipulation, that happen in timeframes that are appropriate and fair, and that include all relevant information in ways that native title holders can understand. Importantly, the right to FPIC is not simply a right to be consulted. Under FPIC, consent must be the *objective* of consultation before the adoption of any legislation or administrative policies that affect First Nations people (Article 19), as well as before the undertaking of projects that affect their rights to land, territory and resources, including mining and other utilisation or exploitation of resources (Article 32).²⁶

Under certain circumstances, the right to FPIC expressly provides for processes that guarantee First Nations people the right to either offer or withhold their consent for proposed projects and activities on their lands and waters, meaning that consent *must*

²⁴ [United Nations Declaration on the Rights of Indigenous Peoples](#), Article 19, United Nations (2007)

²⁵ [Free, Prior and Informed Consent of Indigenous Peoples](#), United Nations Human Rights Office of the High Commissioner (September 2013).

²⁶ [Free, Prior and Informed Consent of Indigenous Peoples](#), United Nations Human Rights Office of the High Commissioner (September 2013).

be obtained as opposed to held as an objective of consultation. These are in cases that involve:

- The relocation of First Nations peoples from their lands or territories (Article 10), and/or
- The storage or disposal of hazardous materials on First Nations peoples' lands or territories (Article 29).²⁷

The future acts regime does not currently meet these minimum standards as they are set out in UNDRIP. Instead, the Act entrenches power imbalances by providing native title holders with only weak procedural rights that result in diminished bargaining power and unjust agreements. In the absence of adequate FPIC protections, projects often proceed without adequate consultation with native title holders, resulting in suboptimal compensation, limited benefit sharing outcomes, and unjust gag clauses that prevent native title parties from asserting their rights.²⁸ Native title parties also often feel considerable pressure to agree to projects during consultation processes, knowing that if they do not reach an agreement with a proponent – and the matter is referred to the National Native Title Tribunal (NNTT) – the Tribunal will almost always find in favour of the proponent, leaving native title parties with no agreements, benefits or protections.²⁹

ANTAR understands that the ALRC's Discussion Paper's proposed impact-based model aims to lift the current standards of the statutory procedures required in situations where an ILUA or an NTMP do not apply. Procedural rights around certain future acts are currently limited to providing a right to notice, opportunity to comment and rights to object, with some cases having no minimum procedural requirements in order for certain future acts to be valid.³⁰ Under the proposed model, Category A future acts would grant native title parties the right to consultation, while Category B future acts would grant native title parties the right to negotiation. While we appreciate the improvement proposed, this model still falls well short of the minimum standards required for FPIC under international law. It is of particular concern that the right to consultation does not require the proponent to adjust their proposal based on the views they have received, nor does it explicitly require them to reach any kind of agreement.

²⁷ Ibid

²⁸ [National Native Title Council Submission to the Senate Inquiry](#): Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (2022): 4.

²⁹ [Kimberley Land Council submission](#) to the ALRC Review of the Future Acts Regime (February 2025): 17.

³⁰ Review of the Future Acts Regime: Issues Paper, Law Council of Australia Submission (2025): 8.

ANTAR submits that the statutory procedures under the future acts regime must be amended to include and expressly embed First Nations peoples' right to free, prior and informed consent – as opposed to a mere right to consultation or negotiation – with regard to all matters that concern their lands and waters. This position was supported by the Concluding Observations of the UN Committee on the Elimination of Racial Discrimination (CERD) in 2017, which urged Australia 'to ensure that the principle of Free, Prior and Informed Consent is incorporated into the NTA and into other legislation, as appropriate, and fully implemented in practice'.³¹

Even the Discussion Paper's newly imagined 'right to object' under the reformed right to negotiate is subject to a determination by the National Native Title Tribunal, which then decides whether or not a future act can be done subject to conditions. ANTAR submits that this 'right to object' remains too weak and is still significantly inconsistent with native title parties' rights under UNDRIP. The majority of future act determinations that have been contested in the NNTT have been found in favour of the government/proponent, with many of these determinations finding that the future act may be done without conditions.³² As of March 2025, only three out of 156 future act determinations by the NNTT found that the future act must not be done, representing less than 2 percent of determinations.³³ These statistics alone support the overhaul of the Tribunal, in order to ensure native title holders are on equal footing with government and future act proponents, and that their rights to self-determination and FPIC are respected. This overhaul has been called for by the NNTC, who have identified the need for the Tribunal to be 'led by First Nations peoples and better grounded in cultural protocol'.³⁴

Recommendation 4: ANTAR recommends that the right to free, prior and informed consent is explicitly included in the procedural rights extended to native title parties under the Native Title Act for any proposed future acts, irrespective of the type of activity proposed or its impact.

³¹ Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia (CERD/C/AUS/CO/18-20, 26 December 2017) [22].

³² Statistics sourced at Native Title Tribunal, Search Future Act Applications and Determinations.

³³ Ibid

³⁴ National Native Title Council Submission to the Senate Inquiry: Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (2022): 6.

Recommendation 5: ANTAR recommends that Proposal 10 be amended to explicitly embed the right to free, prior and informed consent as part of procedural requirements that must be complied with in order for a future act to be valid.

This means that development, including proposed future acts, must no longer be inevitable and uncompromising.³⁵ The default assumption must shift from 'yes unless blocked' to 'only if consented to'.³⁶ In this context, adherence to FPIC would require that all proposals affecting native title holders' lands or other resources under the NTA, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, would be required to proceed by way of ILUA.³⁷ Respect for FPIC also requires the abolishment of the Expedited Procedure under Section 32 of the NTA. As such, ANTAR supports the Discussion Paper's Proposal 9 to repeal Section 32.

We endorse the NNTC's submission to the ALRC's Issues Paper, which stated:

"Respecting FPIC would mean the primary pathway to validating future acts would be through agreement-making – if there is no agreement, the project should not proceed."³⁸

In terms of how the ALRC might develop a proposal to embed FPIC into the future acts regime, the Law Council of Australia point to the *Nature Repair Act 2023* (Cth) and the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), both of which require consent to be obtained from native title holders, which must be demonstrated when providing an application for relevant projects. Both of these statutes could inform the crafting of provisions implementing FPIC in the context of the future acts regime.³⁹

Furthermore, in order to ensure that native title parties can exercise their right to FPIC through the operation of their chosen representative institutions, adequate resourcing of PBCs (and other representative institutions) is critical. Without these operational resources, any legal structural satisfaction of the requirements of FPIC is meaningless.⁴⁰ The meaningful functioning of PBCs and other representative institutions is also vital to fulfilling the right to self-determination (Articles 3 and 4) and Article 19 of UNDRIP, under which governments are required to consult and cooperate

³⁵ Katie Kiss, '[2025 AIATSIS Summit: Voices of Empowerment Strengthening our Future](#)', 5 June 2025.

³⁶ *ibid*

³⁷ [First Nations Heritage Protection Alliance Submission](#) to the Review of the Future Acts Regime – Issues Paper (February 2025): 11.

³⁸ <https://www.alrc.gov.au/wp-content/uploads/2025/04/20.-National-Native-Title-Council.pdf> page 2

³⁹ Review of the Future Acts Regime: Issues Paper, Law Council of Australia Submission (2025): 9.

⁴⁰ [First Nations Heritage Protection Alliance Submission](#) to the Review of the Future Acts Regime – Issues Paper (February 2025): 10.

in good faith with First Nations peoples through their own representative institutions. For representative institutions, including PBCs, to have the capacity to meaningfully function, they must be adequately funded in perpetuity.

Recommendation 6: ANTAR recommends the Commonwealth Government establish a PBC Future Fund that would provide annual, secure and sustainable funding for PBCs and other representative institutions. As far as we can tell, this is articulated in the Discussion Paper's Proposal 14, which we support.

Recommendation 7: ANTAR recommends that if future acts are to be categorised based on the impact they may have on native title rights and interests (as in Proposal 6), the list of factors considered in both categories – against which a proponent measures and categorises the impact of a proposed future act – should be determined in advance by a co-design process with First Nations peoples.

Recommendation 8: ANTAR recommends that the NNTT is not only adequately funded, but that it operates in ways that attract wide support from First Nations communities and that are grounded in cultural protocol. ANTAR endorses NNTC's prior recommendation that the Treaty Authority in Victoria be considered a model of how to establish an independent authority with these powers, and encourages the ALRC to amend Proposal 16 to ensure that operation of the NNTT is fair and does not favour the interests of government and resource developers.

Conclusion

For far too long, First Nations peoples rights have been undermined, sidelined, read down or ignored entirely within mainstream Australian law, policy and practice. Nowhere has this been more obvious than in the failure of the native title system to deliver on its transformative and revolutionary promise. Australia's ratification of UNDRIP signaled the potential for an important turning point in remedying this structural disadvantage, and yet the remarkable lack of progress in domestic implementation over the past decade has undermined what could have been a practical roadmap to justice, rights and respect for First Nations people, built on a foundation of self-determination.

The current review of the Native Title Act's future acts regime presents the Commonwealth Government with a critical opportunity to address longstanding injustices, and to utilise the native title system as a mechanism for at least partial implementation of UNDRIP. By embedding UNDRIP rights into the future acts regime, the Act would better fulfil its intention to be a special measure for the advancement of First Nations peoples – based on their cornerstone right to self-determination – and to serve as a powerful template for a more full and meaningful UNDRIP implementation agenda in Australia.

ANTAR urges the ALRC to seize this opportunity to embed UNDRIP principles into its reform proposals in ways that are courageous, transformative and grounded in the enduring connection between First Nations peoples and Country. This reform is not only critical to correcting the structural imbalances within the future acts regime – it is essential to ensuring that the native title system protects the inherent individual and collective rights of Aboriginal and Torres Strait Islander peoples as First Peoples. Only by embedding these rights at the heart of the future acts regime, can the native title system support First Nations peoples to realise their contemporary cultural, social, and economic aspirations – on their terms, and in accordance with their enduring sovereignty.

For further questions or assistance on any issues raised in this submission, please contact:



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