10 July 2025

Australian Law Reform Commission
By email: nativetitle@alrc.gov.au

To whom it may concern,

Re: Feedback on the Review of the Native Title Future Acts Regime Discussion Paper

I am writing on behalf of the Kimberley Pilbara Cattlemen's Association (KPCA), to provide feedback in relation to the Australian Law Reform Commission Review of the Native Title Future Acts Regime Discussion Paper ('the Discussion Paper').

Overview of the KPCA and its Operating Context in Northern WA

By way of background, the KPCA's representative organisational point of difference is that it is a uniquely placed, locally based industry development and advocacy body that represents a diverse range of cattle producers with, on a cumulative basis, significant pastoral land holdings across the Kimberley and Pilbara and the Gascoyne regions of WA (i.e. Northern WA). The membership base is also inclusive of Aboriginal producers and a significant number of related businesses servicing the industry.

Western Australia's rangelands cover 87% of the State. Around 39% of the State's rangelands, i.e. 87 million hectares, is held under pastoral leases. The pastoral industry commenced in WA in the 1860s. By 1910, the Crown had assigned most of the suitable grazing country through pastoral lease arrangements that largely exist in a similar form today. All pastoral leases in WA expired on 30 June 2015. On 1 July 2015, the WA Minister for Lands renewed 435 leases across the State for periods ranging from 18 to 50 years.

In the just over 30 years of operation of the *Native Title Act 1993* (Cwth) (NTA) nationally, Native Title is understood to be determined across 87% of WA's land mass, which can include the intertidal zone and sea in some areas. In the Kimberley alone, Native Title has been found to exist across approximately 97% of the region.

To further assist in putting the Northern WA pastoral industry in context for the purposes of issues canvased in the Discussion Paper, given that most discussed moreso pertain to the mining industry and State Government operating contexts, the entire pastoral estate in the Kimberley and Pilbara regions covers some 34.2 million hectares of land (21.2 million hectares in the Kimberley and 13 million hectares in the Pilbara). The average size of the 92 pastoral leases in the Kimberley is just over 230,000 hectares and in the Pilbara 228,000 hectares. That is, the average individual pastoral lease size in Northern WA is approximately equivalent to the size of the entire Australian Capital Territory. Approximately 30% of the pastoral leases in

4/2a Macpherson Street
Broome WA 6725
www.kpca.net.au

the Kimberley are Aboriginal held/managed and around 18% in the Pilbara. This is relative to the Southern pastoral regions in WA (Carnarvon/Gascoyne, Murchison and Goldfields/Nullabor regions) for which there are 286 pastoral leases which are on average just under 183,000 hectares in size.

Profit margins in general are very tight in the pastoral industry, hence the sensitivity to any volatility in operating costs as there are many competing factors that need to be managed at any given time, including those that are outside of the pastoralist's control including weather and international market access risk, including for live exports, which can be particularly challenging.

The Northern WA cattle industry has an Aboriginal employment rate of approximately 15% which is the highest in the Australian cattle industry. The KPCA also currently works in partnership with Nyamba Buru Yawuru and Job Pathways on the Aboriginal Pastoral Academy program to further increase Aboriginal employment outcomes across the Kimberley and Pilbara regions.

It is also important to note that the pastoral industry is responsible for providing a significant public good to the State of WA by taking on the responsibility of land stewards, managing not only their cattle but feral animals, weeds, fire and ultimately rangelands condition over the vast majority of the State. Quite often this involves working in collaboration with Indigenous Ranger Groups across Northern WA. Ultimately this is done at the cost of the pastoralist with little or no recognition nor reward for the vital role performed. There is also increasing international recognition and understanding that in a rangelands environment, holistic management of cattle grazing using best practice methods, results in net environmental benefits in relation to soil health and carbon by natural methods. Opportunities in relation to natural capital markets, nature repair/biodiversity credits and carbon are still at various stages of evolution in WA and have the potential to provide significant opportunity.

Discussion Paper Comments

In relation to the Discussion Paper, the KPCA makes the following general comments. More specific comments also convey concerns in relation to question 14 on pp. 30 of the Discussion Paper (i.e. proposed repeal and replacement of Part 2 Division 3 Subdivisions G to N of the NTA/concept of an impact based model and also related examples 7 and 9 on pp. 71-72 pertaining to the concept that vegetation clearing and water licences for agricultural purposes be subject to the Right to Negotiate requirements of the NTA. To this end, the KPCA's comments should be considered alongside those being made by the National Farmers Federation and Northern Territory Cattlemen's Association:

- Regarding the concept of more holistic, public facing agreement registers, this may be worth exploring further given that aside from the Indigenous Land Use Agreement (ILUA) Register in place through the National Native Title Tribunal (NNTT), the only other records available are the s31 (i.e. Right to Negotiate only) NTA agreements from 25 March 2021 through the NNTT which will not necessarily capture pastoral/agricultural agreements. As flagged in the Discussion Paper, there can be issues with records relating to historic agreements reached with Native Title Claim Group are not necessarily readily assigned from the applicable Native Title Representative Body/Claim Group representative to PBC and there can be challenges with historic record keeping by the parties. Otherwise, any opportunity to improve resourcing for the NNTT and the information already available through the NNTT Native Title Claim and Determination public registers and mapping available may be worthwhile exploring further.

- The KPCA acknowledges the importance of addressing the ongoing capacity and viability as well as funding sustainability issues for Native Title Prescribed Bodies Corporate but there also needs to be more fulsome consideration of resourcing requirements for all parties in the process and not assume, in some cases costly practices, including third party funding arrangements used by the mining/resources sector can readily be passed on to other sectors/proponents. For example, where pastoral ILUAs are in place, these were largely a result of ad hoc/non ongoing Commonwealth funding provided through the Native Title Respondents Scheme and linked to Native Title Claims being settled by consent. The KPCA understands that the last time funding was made available to the pastoral industry for this was in 2015 for approximately 4 years. It should also be noted that the full extent of pastoral ILUAs in operation in WA may not be fully reflected in the ILUA Register held by the NNTT as a significant number may have been executed as contracts but not registered.
- The specific concepts for change flagged in the Discussion Paper that may impact the pastoral industry do not at this stage provide sufficient detail nor recognition of the operating contexts/conditions facing the pastoral industry/specific to agricultural operations given most of the examples referred to in more detail in the Discussion Paper seem to be very mining/State Government focused. There would be considerable risk for the pastoral industry in pursuing an impact only based model as currently described in the Discussion Paper specifically if no regard is had for purpose of impacts given the vital role the industry has to play in managing vast tracts of land across WA (refer to pp. 1 and 2 of this submission), the profitability of the industry as well as the significant risks the industry faces due to factors outside of its control (weather and market access). There is also a critical need to consider any such changes from a legislative and regulatory harmonisation perspective alongside current and proposed State and Commonwealth environmental and cultural heritage regulatory and policy requirements and also in relation to other land management opportunities such as access to carbon markets and nature repair/biodiversity credit opportunities. To this end it is noted that the issue of water rights in the Australian Constitution (section 100) and that the Commonwealth cannot limit the State's rights to water for irrigation and conservation purposes needs to be more fulsomely analysed and considered in the context of the Discussion Paper. Further, the Discussion Paper does not appear to readily reference/analyse the significant, already established jurisprudence/case law in context of Non-Exclusive Native Title and the relative rights of pastoral lease holders, which is critical to holistically consider.

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- Given key concepts and exposure to liability in relation to Native Title compensation is still emerging/being more readily understood with important court cases currently in train, it is imperative that consideration also be given on the resourcing front to the Commonwealth comprehensively addressing the longstanding issue of providing Native Title Financial Support to the State and Territory Governments given the significant financial liability/exposure anticipated. In relation to any possible Native Title Compensation liability linked to the grant and subsequent renewal of pastoral leases in WA, the current legal understanding is that it is more likely than not to be a State Government rather than individual lease holder liability.

The KPCA thanks the ALRC for the opportunity to provide comments on the Discussion Paper and looks forward to further opportunity to discuss the concepts flagged given the need for further detail to be provided to more fulsomely consider any suggested changes.

Please do not hesitate to contact KPCA CEO Bron Christensen via email on ceo@kpca.net.au or mobile phone number [redacted] should you wish to discuss the matters raised in this submission further.

Yours sincerely,

[redacted]

Jak Andrews
Chair

4/2a Macpherson Street
Broome WA 6725
www.kpca.net.au