



14 July 2025

Australian Law Reform Commission

By email: nativetitle@alrc.gov.au

Dear Commissioners,

RE: Review of the Future Acts Regime

The North Queensland Land Council (**NQLC**) welcomes the opportunity to provide a submission to the Australian Law Reform Commission (**ALRC**) in response to its *Review of the Future Acts Regime*, Discussion Paper 88 (May 2025).

NQLC is a native title representative body with statutory functions under section 203B of the *Native Title Act 1993* (Cth) (the **NTA**). Incorporated in March 1994, NQLC offers this submission based on three decades of experience ensuring that the native title rights and interests of traditional owners within its region are recognised and protected.

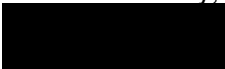
In NQLC's region there are currently 32 prescribed bodies corporate and 14 native title determination applications with future act rights.

As the first comprehensive review of the future act regime since its creation, it is long overdue. NQLC hopes this review leads to reforms that promote greater equality, efficacy and fairness for native title holders and claimants.

NQLC's response to the Discussion Paper is below.

NQLC appreciates your consideration of this submission.

Yours faithfully,


Leon Yeatman
Chief Executive Officer
North Queensland Land Council NTRB Aboriginal Corporation

Q6 Should 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?	NQLC supports in principle the concept of Prescribed Body Corporates (PBC's) in developing Native Title Management Plans (NTPMPs) provided sufficient funding is provided to all PBCs to adequately: • consult with the common law holders (CLHs) about the type of future acts permitted; • consult with CLHs about their aspirations in developing opportunities on Country that native title holders may be interested in pursuing; • seek legal and commercial advice on the advantages and disadvantages of having a NTPMP; • survey the land to establish where future acts are permitted on Country; • culturally map Country; and • develop fire management within the NTPMP. Additionally, so that NTMPs remain relevant and fit for purpose over time PBCs would need to be funded on an ongoing basis to be able to review their NTMPs, seek the views of the CLHs and amend the NTMPs as required. NQLC considers that funding of PBC's is critical if the concept of NTMPs is going to have any success as PBCs have various levels of capacity to engage with the process particularly if the NTMPs are to provide alternative procedures for how future acts can be validated. If PBCs are not adequately funded to develop NTMPs then the risk is the process will create such an imbalance that the alternative procedures for how future acts can be validated will only be suitable and work for those PBC / Traditional Owner groups who have capacity to develop NTPMPs independently of funding. NQLC however notes implementation issues with NTPMPs. For example, in Queensland in the Wet Tropics Management Authority area, where 87% of their area is covered by multiple determinations, how will this be managed for one future act with potentially varying processes under NTPMPs?
Q7 Should the NTA be amended to provide for mandatory conduct standards applicable to negotiations and content standards for agreements, and if so, what should those standards be?	<i>Good faith protection required in negotiations with government parties</i> The obligation to negotiate an ILUA "in good faith" does not apply as it does when negotiating a RTN agreement. The absence of that obligation when negotiating with a government party regarding an infrastructure facility has the potential to result, in NQLC's experience, in express threats of compulsory acquisition

of native title. This negotiation tactic pressurises Native Title Parties (**NTPs**) to accept a negotiating position that may be less than best practice or not in step with market standards.

In relation to content standards NQLC does not support this and is of the firm view that content standards could undermine the negotiation position of NTPs.

Good faith protection required in negotiations where private infrastructure facilities are proposed

In 2012 in Queensland, the Liberal National Party (**LNP**) government passed the *Economic Development Act 2012* (Qld) to amend the *State Development and Public Works Organisation Act 1971* (Qld) (the **SDPWOs Act**) so that the Coordinator-General, on behalf of a proponent, can compulsorily acquire land or easements for a 'private infrastructure facility' (**PIF**). If a proposed infrastructure facility is approved as a PIF, the proponent must negotiate with the registered owner of the land and/or NTHs to purchase the land needed for the facility and/or enter into an ILUA. If negotiations are unsuccessful the Coordinator-General may (as a last resort) compulsorily acquire the land on behalf of the proponent. Therefore, in a scenario where the Coordinator General is considering a compulsory acquisition for a PIF under the SDPWOs Act, there is no statutory protection for the NTP. A proponent can make nominal attempts to negotiate an ILUA for 6 months, and then simply fall back on the compulsory acquisition powers by the Coordinator General. Not only is there no obligation to negotiate in good faith, but there is a risk that some proponents may use their ready access to the compulsory acquisition power as a leverage to negotiate compensation on unfair terms.

Funding for NTPs to participate

NQLC supports the proposal that there is a statutory requirement that proponents contribute to funding a NTP's participation in negotiations. NQLC's practice is to enter into a negotiation protocol with a commercial / government proponent (which addresses provision of information, funding requirements, costs of authorisation meeting process, costs of legal and commercial advice etc) but negotiation of the terms of the negotiation protocol in itself can be time consuming (and NQLC is not able to recover this cost).

For instance, the cost of travel and accommodation required to facilitate the attendance at community meetings of NTPs living off Country should be met by the proponent. However, the cost of funding meetings in NQLC's region can often be significant (as a result of the history of the

displacement of Traditional Owners in central and north Queensland) and high attendance costs are often questioned by proponents. An authorisation meeting can cost in excess of \$100,000. NQLC is often pressured to schedule meetings back-to-back to allow cost sharing with another proponent. In at least one case, NQLC has seen a proponent seek to avoid the cost of negotiating an ILUA by lodging a non-claimant application and relying on section 24FA protection for the grant of a sales permit.

Noting that while it is NQLC's practice to seek that proponents enter into a negotiation protocol document with commercial proponents not all proponents are willing to do so which places NTPs at a distinct disadvantage during negotiations. The NTA should be amended to provide for mandatory conduct standards applicable to negotiations and include payments to the NTP to engage fairly and to prevent the proponent from dominating the negotiation process.

Funding for NTPs to obtain advice

Supporting NTPs to reach an informed decision requires considerable resources to access expertise and advice in order to understand the opportunities and risks surrounding a proposed development. In addition to the advice that NQLC can provide, NTPs may require economic, financial, environmental and expert legal advice and want to understand what constitutes fair or industry standard compensation. NTPs often also require advice around establishing a trust to hold proposed benefits under an agreement.

However, proponents are not compelled by the NTA to provide such support and NQLC has found that the level of funding available can be dependent upon the size of a proponent and is also influenced by a proponent's motivation for entering into agreement (such as seeking a social licence and project support in other forums).

The ALRC has proposed that, amongst other things, the proponent should provide its land valuations to NTPs. A preferable position in NQLC's view would be for the proponent to provide reasonable funding for the NTP to engage its own independent land valuer. NQLC has seen how differences in land valuation methodologies between valuers can lead to an improved compensation outcome for the NTP.

The development of mandatory conduct standards should consider a commitment to engage early, setting appropriate timeframes for consultation.

P1 The NTA and PBC Regs should be amended to allow for the expanded use of standing instructions given by CLHs to PBCs for certain purposes.	NQLC supports the proposal of the PBC Regs being amended to allow for the expanded use of standing instructions for certain matters but should not include standing instructions where PBC's are permitted to surrender native title rights and interests in relation to land or waters as such a decision should be presented to the CLHs to decide on a case-by-case basis. This proposal will reduce resources for the PBCs however it needs to be closely managed to ensure it does not diminish the decision making of CLHs where it will impact on native title rights and interests. NQLC envisages that any amendments to the PBC Regs would be to allow PBCs to enter into commercial agreements for the benefit of CLHs.
Q8 Should the NTA expressly regulate ancillary agreements and other common law contracts as part of agreement-making frameworks under the future acts regime?	NQLC considers the proposal to regulate ancillary agreements and other common law contracts as problematic as this may restrict the potential of benefits being negotiated for fear of information ending up in the public domain. Additionally, most ancillary / common law agreements contain strict confidentiality terms that preclude registration. NQLC considers that the conduct and expectations during negotiations of agreements should be contained in a head agreement, such as a negotiation protocol document, and similar terms should be enshrined in the NTA and allow scope for head agreements to expand over time and not be limited by prescriptive legislation. No amendments are supported by NQLC that regulate the content of ancillary/ common law agreements.
P2 The NTA should be amended to provide that: a) the PBC for a determined area has an automatic right to access all registered agreements involving any part of the relevant determination area; and b) when a native title claim is determined, the Native Title Registrar is required to identify registered agreements involving any part of the relevant determination area and provide copies to the PBC.	NQLC supports the proposal that the NTA should be amended to provide a PBC with an automatic right to access all agreements involving any part of the relevant determination. However, NQLC also recommends that the right should be extended to all agreements ever registered – not just those that are registered at the time of determination. This distinction is important because there may be historical agreements under which the native title parties consented to the extinguishment or impairment of native title in exchange for compensation. It is important for the PBC to understand the terms on which consent was granted because there may be instances where the parties agreed to the transfer of land to the native title party and such land ought to be transferred to, and managed by, the PBC following a determination. Agreements that have been fully implemented many years ago may have been removed from the register and would not be

	captured by the proposed amendment in its current form. In the example provided, the PBC might remain unaware of the existence of such land that it is entitled to.
Q9 Should the NTA be amended to provide a mechanism for the assignment of agreements entered into before a positive NT determination is made and which do not contain an express clause relating to succession and assignment?	NQLC supports NTA amendments to allow for appropriate succession to PBCs following a positive NT determination provided any amendments: • allow for assignment to the relevant PBC for the determined area by operation of law; • allow for the relevant PBC to renegotiate the agreement should the previous NTP was determined as not to be the native title holders for the agreement area; and • should the ILUA no longer be relevant due to expiry or no longer serves a purpose than there should be simple mechanism in place for PBCs to request the removal of the register under s 199C of the NTA.
P3 Section 199C of the NTA should be amended to provide that, unless an ILUA specifies otherwise, the agreement should be removed from the Register of ILUAs when: a) the relevant interest in property has expired or been surrendered; b) the agreement has expired or been terminated; or c) the agreement otherwise comes to an end.	NQLC supports amendment to s 199C on the basis noted below. The NTA should be amended to provide that, unless an ILUA specifies otherwise, the agreement should be removed from the Register of ILUAs when: • the relevant interest in property has expired or been surrendered; • the agreement has expired or been terminated; or • the agreement otherwise comes to an end; • all proponent obligations have been fulfilled and all survival clauses referred to in the ILUA is no longer relevant; and • provided that the removal of the ILUA from the Register is not to the detriment of the CLHs.
P4 The NTA should be amended to require the Native Title Registrar to periodically audit the Register of ILUAs and remove agreements that have expired from the Register.	NQLC agrees with this proposal in principle but this may not be able to be achieved practically unless the Registrar and PBCs are adequately resourced to investigate the ILUAs that are subject to the audit. NQLC considers that the majority of PBCs in its representative area would need relevant legal advice before they would be in a position to advise the Registrar to remove agreements.
Q10 Should the NTA be amended to allow parties to agreements to negotiate	There are limited circumstances in which NQLC supports an amendment to the NTA that would allow parties to negotiate amendments without needing to undergo the registration process again. In light of

specified amendments without needing to undergo the registration process again, and if so, what types of amendments should be permissible?	section 24EA which provides an agreement is binding on all persons holding native title, the authorisation process which allows every individual who holds or may hold native title in the affected area an opportunity to understand and authorise the agreement, is very important. Amendments that are not merely technical in nature should not be made without the knowledge or authorisation of the Native Title Claimants (NTCs) or the Native Title Holders (NTHs). However, NQLC considers that an amendment that improves a compensation outcome, particularly in the case of long-term projects with a term of more than twenty years, may be an acceptable amendment. Authorisation meetings can be prohibitively expensive and may deter a proponent from considering an amendment to the terms of ILUA that is in the commercial favour of the NTP.
P5 The NTA should be amended to provide that the parties to an existing agreement may, by consent, seek a binding determination from the NNTT in relation to disputes arising under the agreement.	NQLC agrees with this in principle providing there is consent by all parties. Many of the disputes under agreements however are broader than the native title consents given and the NNTT would need to be properly resourced to have experts available depending on the nature of the dispute.
Q11 Should the NTA be amended to provide that new agreements must contain a dispute resolution clause by which the parties agree to utilise the NNTT's dispute resolution services, including mediation and binding arbitration, in relation to disputes arising under the agreement?	NQLC agrees in principle for the NTA to be amended for the NNTT to be utilised to provide dispute resolution services but this is subject to: • consent of all parties for this service; • the NNTT being adequately resourced to mediate such disputes; • the PBCs being adequately resourced to participate in the mediation process so as to create a level playing field on par with the proponent during the mediation process; and • the PBCs decide whether they wish to make use of the NNTT mediation services, as ultimately, the PBC should be afforded a choice if they wish to pursue an alternative course of action to resolve the dispute.
Q12 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?	NQLC considers publishing terms of native title agreements as problematic as information being publicly available does not equate to better outcomes for PBCs and ultimately the CLHs. NQLC suggests that if the agreements were made public the majority that will end up in the public domain will not reflect terms of best practice agreements. If anything, given the limited best practice agreements in existence the opt-in register may suggest to proponents that best practice and relevant commercial offers based on the size and scope of the project may not be necessary.

Q13 What reforms, if any, should be made in respect of agreements entered into before a NT determination is made, in recognition of the possibility that the ultimately determined NTHs may be different to the native title parties to a pre-determination agreement?	NQLC agrees with the ALRC that in light of the time it can take to resolve a native title determination application (there are some in NQLC's region on foot for nearly 10 years), it is important that NTCs have the ability to enter into agreements prior to a determination and that such agreements can provide financial benefits. However, the NTA has failed to support NTCs with the capacity to hold money. Like many NTRBs, NQLC has grappled with how NTCs should receive compensation prior to a determination and how to protect the parties that enter into the agreement where there is no certainty that they are the party who will ultimately be determined to be the native title holder for the area. It would be highly inefficient and administratively burdensome to establish a trust for every native title claim group which enters into an agreement. Ultimately NQLC established a discretionary trust in order to temporarily hold money for a class of beneficiaries who hold native title rights within the North Queensland representative body area until the point of determination. This solution however is not ideal and NQLC would prefer that this responsibility is taken out of its hand. NQLC generally supports a reform that would ensure pre-determination compensation and other payments are held on trust by a centralised statutory trustee.
Q14 Should Part 2 Div 3 Subdivs G–N be repealed and replaced with a revised system for identifying the rights and obligations of all parties in relation to all future acts, which: a) categorises future acts according to the impact of a future act on NTRIs; b) applies to all renewals, extensions, re-grants, and the re-making of future acts; c) requires that multiple future acts relating to a common project be notified as a single project; d) provides that the categorisation determines the rights that must be afforded to native title parties and the	NQLC agrees that there can be a fundamental misalignment between the impact that a future act may present and the applicable procedural rights afforded to NTPs under Part 2 Division 3 Subdivisions G–N of the NTA. Of particular concern to NQLC is the reliance on section 24KA for the construction of transmission lines. In Queensland, Powerlink is currently investing heavily in expanding its transmission infrastructure network to support the development of the renewable energy sector and providing regional areas with a reliable source of power. Substations are typically built on freehold land so that native title complications are avoided, however, infrastructure for transmission lines (including up to 500kV) is regularly built on land subject to native title and NQLC is managing numerous notices under section 24KA. Despite the significant impact to Country caused by the construction of transmission lines, section 24KA only provides weak procedural rights to NTHs such as the right to be notified and the right to comment. Furthermore, uncertainty surrounds whether section 24KA can be appropriately relied on where a particular project is being constructed by Powerlink to connect a private project to the national electricity grid and is proposed to be used by a single private proponent.

obligations of government parties or proponents that must be discharged for the future act to be done validly; and e) provides an accessible avenue for native title parties to challenge the categorisation of a future act, and for such challenge to be determined by the NNTT?	Nevertheless, NQLC is cautious to provide wholesale support to the impact-based model proposed by the ALRC under which future acts would be categorised based on the impact they may have on native title rights and interests (NTRIs), for the reasons outlined below. First, with respect to renewable energy projects, the proposal poses a risk that the current need to enter into an ILUA with the NTCs or NTHs where a proposed renewable energy project is over pastoral lease, could be effectively downgraded to the right to negotiate. Sections 199A and 154 of the <i>Land Act 1994</i> (Qld) (the Land Act) provide, respectively, that a lease may only be used for its designated purpose and the Minister may approve an application by a lessee that a lease be used for additional or fewer purposes. Therefore, a pastoralist considering a windfarm development on their property must apply under the Land Act to have an additional purpose of renewable energy added to the purpose their lease. Native title must be addressed via an ILUA before the additional purpose is addressed, however, this is not a legislated requirement in Queensland as it may be in other states such as South Australia. At least until now, Queensland has been reluctant to consider compulsory acquisition of native title for private infrastructure projects under the SDPWOs Act. Therefore, if the status quo is maintained, NTPs in Queensland are in a stronger position negotiating an ILUA when there is effectively no fallback position for the renewable energy proponent in this scenario, than they are being in the RTN process with the risk of a future act determination application being submitted after six months. Secondly, future acts that do not affect any sites or areas of cultural heritage sensitivity are proposed to fall to Category A. The <i>Aboriginal Cultural Heritage Act 2003</i> (Qld) (the ACHA) provides for a register and cultural heritage database and this may be used by a government party in Queensland to assess whether the impact of a future act is Category A or Category B. NQLC's concern is that the database does not provide a complete picture of cultural heritage in Queensland as there is no legislative requirement to report cultural heritage site locations and Aboriginal parties are often reluctant to have information included on the database.
Q15 If an impact-based model contemplated by Q14 were implemented, should there be exclusions from that model to provide tailored provisions and	With respect to Question 15(c), NQLC holds the view that the right to negotiate ought to apply to all compulsory acquisitions and be excluded from the impact-based model contemplated by the ALRC. The impact happens at the time the native title consent is given and not a subsequent activity which has been confirmed in <i>Brown v WA</i> HCA 8.

specific procedural requirements in relation to: a) infrastructure and facilities for the public (such as those presently specified in s 24KA(2)); b) future acts involving the compulsory acquisition of all or part of any NTRIs; c) exclusions that may currently be permitted under ss 26A–26D; and d) future acts proposed to be done by, or for, NTHs in their determination area?	With respect to Question 15(d), NQLC agrees that there should be an exclusion from the proposed impact-based model contemplated by Question 14 for future acts proposed to be done by, or for, NTHs in their determination area. The example below demonstrates how the NTA has created an unintended barrier to NTHs accessing their land and the need for an exception for future acts proposed to be done by RNTBC's for the benefit of NTHs. NQLC represents a PBC that holds on trust a number of lots as fee simple under the <i>Aboriginal Land Act 1991</i> (Qld) which were granted in settlement of its native title claim. The RNTBC aspires to make this land available to its NTHs via lease agreements. However, as the grant of a lease over exclusive possession native title is considered to be a future act, the PBC is presently required by the NTA to enter into an ILUA with itself (in its own right as trustee of the ALA freehold, and as agent for the NTHs consenting to the RNTBC granting the leases). The burden and impost of drafting and authorising such an ILUA has meant that this issue remains unresolved, and the land sits unavailable and inaccessible to the NTHs.
Q16 Should the NTA be amended to account for the impacts that future acts may have on NTRIs in areas outside of the immediate footprint of the future act?	NQLC supports in principle that there should be an amendment to account for impacts of future acts outside of the immediate footprint. An example of this is a dam where the impact is the dam wall but its construction will have both downstream and upstream impacts on NTHs and NTCs cultural heritage. Where flooding for a dam is anticipated then the downstream group for example should have a future act right for this impact on Country.
P6 – Reformed RTN process	NQLC agrees in principle to this proposal however notes that the NTHs and NTCs should be funded to engage in this process. In relation to Proposal 6 a., should the PBC or NTCs not be satisfied with the information received then they should have the ability to reasonably request further information and if that is not forthcoming then the objection in b. should include a mechanism for this information to be provided before there is any determination of the NNTT. In relation to the proposed 5-year period this would be problematic and it should be at the PBC or NTCs consent as to whether similar negotiations could proceed.

	In relation to f. this needs to ensure that any binding decision remains confidential as it is likely to contact commercially sensitive information. This should also apply to g. that any agreement reached should remain confidential.
Q17 Should the <i>Native Title Act 1993</i> (Cth) be amended to: a) exclude legislative acts that are future acts from an impact-based model as contemplated by Question 14, and apply tailored provisions and specific procedural requirements instead; and b) clarify that planning activities conducted under legislation (such as those related to water management) can constitute future acts?	As noted above, NQLC is cautious to provide wholesale support to the impact-based model proposed by the ALRC under which future acts would be categorised based on the impact they may have on NTRIs. It is submitted that for legislative acts that impact NTRIs the NTHs should be afforded the same level of protection as afforded to other property rights and the impacts of such acts on the NTRIs should be compensable. Additionally, it is agreeable that planning or regulatory frameworks that affect NTRIs, such as water management plans, should be classified as future acts and addressed under an amended future acts regime provided that the amendments provide the opportunity for NTHs and NTCs to still assess and adequately address individual future acts that may be issued after the development of such plans.
P7 The NTA should be amended to empower the NNTT to determine issues referred to it by agreement of the negotiation parties.	If the NNTT is given this power they will need to be properly resourced to have the expertise to deal with the matter at hand. Many disputes under agreements as noted above do not go to the native title consents but are more of a contractual nature. Any determination by the NNTT should also be confidential unless agreed to by the parties.
Q18 What test should be applied by the NNTT when determining whether a future act can be done if a native title party objects to the doing of the future act?	NQLC suggests that the NNTT should consider the following collectively when considering whether a future act can be done: • section 39 NTA criteria; • effects of the act on the environment as well as impacts on climate change; • relevant human rights legislation in considering whether a future act can be done; and • payment of compensation to the NTP. For example, the <i>Human Rights Act 2019 (Qld)</i> under s 28(2) sets out that <i>Aboriginal peoples and Torres Strait Islander peoples must not be denied the right.....</i>:

	<i>(a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings;</i> <i>(e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.</i> <i>and section 28(3)</i> <i>Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.</i> Additionally, the NNTT should consider that for any decision that the future act can be done their still needs to be a compensation payment afforded to the NTP and the power to provide for compensation should be a power of the NNTT providing any compensation awarded is confidential.
Q19 What criteria should guide the NNTT when determining the conditions (if any) that attach to the doing of a future act?	NQLC suggests that when determining the conditions (if any) that attach to the doing of a future act the same conditions as noted for question 18 apply and such conditions include: • as mandatory best practice and fee for service work to best protect cultural heritage; and • that compensation is payable as a condition of doing the future act.
P8 Section 38(2) should be repealed or amended to empower the NNTT to impose conditions on the doing of a future act which have the effect that a native title party is entitled to payments calculated by reference to the royalties, profits, or other income generated as a result of the future act.	As noted in Q18 above NQLC agrees with this amendment providing that any determination of compensation remains confidential.
P9 Section 32 should be repealed.	NQLC received 110 Section 29 notices in the 2024/2025 financial year, 75 of which were under the expedited procedure. Having to negotiate ILUAs with NTHs or NTCs authorisation for each matter would be problematic for NQLC.

	NQLC however acknowledges the issues with other jurisdictions that do not have a mechanism like the Native Title Protection Conditions so will leave it to those jurisdictions to submit their views to the ALRC.
Q20 Should a reformed future acts regime retain the ability for states and territories to legislate alternative procedures, subject to approval by the Commonwealth Minister, as currently permitted by ss 43 and 43A?	NQLC is of the view that these provisions should not be retained. Native Title is a federal jurisdiction and although only being used by South Australia at the moment could cause difficulties with other jurisdictions with changes in government.
Q21 Should Part 2 Div 3 Subdiv F be amended: a) to provide that non-claimant applications can only be made where they are made by, or for the benefit of, Aboriginal or Torres Strait Islander peoples; b) for non-claimant applications made by a government party or proponent, to extend to 12 months the timeframe in which a native title claimant application can be lodged in response; c) for non-claimant applications in which the future act proposed to be done would extinguish native title, to require the government party or proponent to establish that, on the balance of probabilities, there are no native title holders; or d) in some other way?	NQLC recommends the repeal of, rather than amendment to, Part 2 Division 3 Subdivision F in order to bring an end to the rise of discriminatory non-claimant applications in Queensland. In NQLC's region alone there are currently five active non-claimant applications, and two negative determinations of native title as result of non-claimant applications. All of these non-claimant applications were triggered by the 2014 amendment to the Land Act which made way for the conversion of agricultural and pastoral term leases to freehold, closely followed by the renewable energy transition and the sector's preference for the most secure form of tenure. The State requires leaseholders seeking to upgrade a term lease to freehold to address native title issues as a condition of offer and advises that this can be achieved by either negotiating an ILUA, or by making a non-claimant application.¹ Therefore, pastoralists, actively encouraged by the State and potentially funded by clean energy companies, file a non-claimant application for the purpose of triggering section 24FA protection and progressing proposed dealings. If NTCs oppose the conversion to freehold, there is a limited three-month window from the date of notification of the non-claimant application in which to file an application for a determination of native title and secure its registration. If no native title claim is registered within that timeframe, a non-claimant application permits the lessee to seek section 24FA protection which provides validity for the conversion of the term lease to freehold. This negatively impacts the procedural rights of native title parties and leads to extinguishment of native title.

¹ <https://www.qld.gov.au/environment/land/state/use/native-title>

	The state's current policy, however, is that whilst section 24FA protection can be theoretically relied upon to grant freehold where no claim has been filed in time, it requires a lessee to obtain a determination that native title does not exist in relation to the non-claimant application area. With a recent change in government in Queensland and bearing in mind that it was the LNP government that amended the Land Act in 2014, there is uncertainty as to whether this policy will be maintained. The non-claimant application process is discriminatory. Three months or less to prepare a native title application is grossly inadequate, particularly in cases where little or no anthropological research has been conducted and the correct group may still be unknown. Extensive work and preparation is required to pass the registration test (which has become more difficult since the introduction of s24FA in 1998). On the other hand, extraordinarily little preparation is required by the non-claimant applicant. The Federal Court Form 2 does not require the applicant to identify how it will support the assertion that native title does not exist in the application area. This process places undue strain on NQLC's planning and resources and disrupts prioritisation of existing claims. The limited timeframe in which to respond to protect native title from permanent extinguishment forces NQLC to act immediately and redirect its resources that are already under strain. It interferes with our capacity to efficiently manage our workload according to the interests of the native title parties. The State is effectively forcing NQLC and NTPs into the claims process with inadequate funding to properly progress those claims to the detriment of those NTPs who are yet to lodge claims.
P10 The NTA should be amended to expressly provide that a government party's or proponent's compliance with procedural requirements is necessary for a future act to be valid.	NQLC agrees with the proposal that if there is non-compliance with a provision of Part 2 Div 3 because the corresponding procedural rights have not been properly extended to the NTCs or NTHs, then the act should be deemed invalid. The purpose of the future act regime, that is, to provide the NTCs and NTHs with equality in the form of rights and protection from future acts, has been undermined by the decision reached by the Full Federal Court in <i>BHP Billiton Nickel West v KN (Deceased) (Tjiwarl and Tjiwarl #2)</i> [2018] FCAFC 8 and requires legislative correction. The Full Court held that in most cases a future act (such as the grant of a statutory licence or other authority) will be valid if it is "covered by" a provision of Part 2, Division 3. In other words, failure to comply with the procedural requirements of those provisions, except in the few cases where validity is expressly conditioned on such compliance, will not result in the future act being invalid.

	Therefore, in order to address the result of <i>Tjiwarl</i>, NQLC recommends that each subdivision be amended to provide express declarations of invalidity in the event of non-compliance. Without legislative intervention, much of the future act regime and the procedural rights extended to NTCs or NTHs are unenforceable, meaningless and places unnecessary strain on NQLC's and PBC or NTC resources. In NQLC's experience it is not uncommon for future acts to be invalidly notified by a government party; however, our clients are powerless to respond and demand compliance because regardless of whether the government party has complied with the future act regime or not, the act is considered valid. By way of example, in NQLC's region a term lease was granted by the State to a developer pursuant to section 24MB despite failing to notify the NTCs of its intention to grant such an interest pursuant to this subdivision. As a result of <i>Tjiwarl</i>, there are no consequences for the State's failure to meet its obligations under the future act regime and nor is there a statutory entitlement to compensation for the invalid future act.
Q22 If the NTA is amended to expressly provide that non-compliance with procedural obligations would result in a future act being invalid, should the Act expressly address the consequences of invalidity?	It is NQLC's view that should the NTA be amended to provide that non-compliance with procedural obligations would result in a future act being invalid, it should also expressly state the consequences for the invalidity should include a statutory entitlement to compensation and that the act of the government agency is also invalid not just against native title.
Q23 Should the NTA or the <i>Native Title (Notices) Determination 2024 (Cth)</i>, be amended to prescribe in more detail the information that should be included in a future act notice, and if so, what information or what additional information should be prescribed?	NQLC agrees that the <i>Native Title (Notices) Determination 2024 (Cth)</i> should be amended to prescribe in more detail the information that should be included. Legislative amendments are required to address the decision of <i>Harris v Great Barrier Reef Marine Park Authority [2000] FCA 603</i> (the Harris case) which was in relation to section 24HA and continues to impact the quality of future act notices that NQLC receives. The NTCs argued in that case that they were entitled to extensive information before they could be in a position to respond to GRBMPA's proposal to grant the relevant permits. The Full Court, however, found that the GRBMPA had sufficiently complied with this obligation under section 24HA(7) by giving the notices and inviting the NTCs to comment on the possible grant of permits. The GRBMPA had provided more information than required by section 24HA(7). At [45], "Since the Authority can meet its obligation under section 24HA(7) by notifying the registered native title claimants that it proposes to grant an unspecified number of permits of a particular class for access to the area defined in the notification that is the area the subject of all those permit

	applications, there is, in our opinion, no justification for imposing on the Authority the obligation to give the registered native title claimants copies of each of the individual permit applications or all the information provided by each of the permit applicants to the Authority in connection with each application. A general description of the activities comprising the act or class of acts proposed to be done will suffice.” As a result of the <i>Harris</i> case, NTHs in NQLC’s region frequently receive “Class Notifications” pursuant to section 24HA that do not provide sufficient information for them to assess the impact of the grant of the proposed permits. The first example is the GBRMPA which frequently issues a single notice that it intends to grant multiple permits (sometimes up to 100) for education, recreational or research purposes and if granted, may be exercised in <i>all zones and locations</i> within the Great Barrier Reef Marine Park Section and the Great Barrier Reef Coast Marine Park. Permits may be up to six years. The second example is the Department of Agriculture and Fisheries (DAF) which is in the practice of providing a State-wide notice to issue up to 150 general fisheries permits under section 49 of the <i>Fisheries Act 1994</i> (Qld) and regulation 25e of the <i>Fisheries (General) Regulation 2019</i> (Qld) which may be exercised in <i>all Queensland waters</i> (emphasis added) within a 12-month period. Permits may be up to three years. NTHs and RNTBCs need to appreciate the nature of the activities to be undertaken pursuant to each permit in relation specific areas within their claim or determination area. Yet these blanket notices refer to vast areas of Queensland, and they do not specify the total number of permits that relate to a single area or watercourse. The notice about the general fisheries provides no information about the number, size of species, or fish that will be removed. The information in the notices from the GBRMPA and DAF is so generic that NTHs are in no position to provide any sort of informed or meaningful comment on how their native title rights or interests that may be impacted, or to even understand whether they need to make a comment at all. Nor can they understand if there is threat posed to their cultural heritage. Despite sustained objections from NQLC and the NTHs, no class notification has ever been retracted or reissued. NQLC recommends that in order to improve the quality of the notices received the following additional information should be prescribed: a) the location for each permit; b) a copy of each application for permit; and
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	c) a copy of the conditions that would attach to each permit.
P11 All future act notices should be required to be lodged with the NNTT. The Tribunal should be empowered to maintain a public register of notices containing specified information about each notified future act.	NQLC supports the proposal that all future act notices should be lodged with the Tribunal and recorded in a single, publicly accessible register. However, the proposal falls short in that in order to assess whether compensation is payable for the future act that was proposed, NTHs need to understand whether it actually occurred. The notice in and of itself is insufficient for the purposes of later considering whether and how much compensation is payable. Therefore, a record of the permits etc granted pursuant to the notice would also be valuable – particularly as an assessment of compensation may not be undertaken for some considerable time. The NTRB should also receive notification when a proposed act has occurred.
Q24 Should the NTA be amended to provide that for specified future acts, an amount which may be known as a ‘future act payment’ is payable to the relevant native title party prior to or contemporaneously with the doing of a future act: a) as agreed between the native title party and relevant government party or proponent; b) in accordance with a determination of the NNTT where a matter is before the Tribunal; c) in accordance with an amount or formula prescribed by regulations made under the NTA; or d) in accordance with an alternative method? Q25 How should ‘future act payments’ interact with compensation that is payable under Part 2 Division 5?	The NQLC does not agree with comments at paragraph 278 of the Discussion Paper as it appears to be confusing an activity with the legal right to do an act. Agreeing to a future act payment may also detract from a PBC or NTC from being able to negotiate compensation with the beneficiary of the future act. If the payment is above any compensation payable as contemplated by Question 25 then this may be acceptable to NQLC however this also needs consideration as to how those funds are held if there is no PBC.
P12 Sections 24EB and 24EBA should be amended to provide that compensation	NQLC supports the proposal that sections 24EB and 24EBA should be amended in accordance with the ALRC’s proposal. Whether the compensation payable under an agreement is full and final for the

payable under an agreement is full and final for future acts that are the subject of the agreement only where the agreement expressly provides as such, and where the amounts payable under the agreement are in fact paid.	future act ought to be optional so that the NTP has the ability to defer compensation until the extent of the future act's impact on cultural loss is better understood and more accurately quantifiable. Further, an amendment the compensation is only full and final where the amount has actually been paid is critical too to protect the rights of NTPs. There are historical agreements in NQLC's region, drafted by lawyers not sufficiently familiar with the future act regime, where consent to impairment of native title has not been timed with the settlement of compensation. As a result, when the development did not proceed, the amounts payable under the terms of the ILUA were not transferred, native title was permanently extinguished upon registration of the ILUA, and the NTCs are barred from seeking compensation from the State.
Q26 Should the NTA be amended to provide for a form of agreement, which is not an ILUA, capable of recording the terms of, and basis for, a future act payment and compensation payment for future acts?	NQLC supports this proposed amendment in principle however there still needs to be provisions for PBCs to cost recover for standing or case-by-case consent from CLHs.
P13 The NTA should be amended to provide a statutory entitlement to compensation for invalid future acts.	NQLC supports the proposal that the NTA should be amended to provide a statutory entitlement to compensation for invalid future acts. Presently where NTRIs are impacted by future acts that have not been validated by the NTA, NTHs cannot seek compensation under the NTA. NTHs are left to seek redress from the general law and there is considerable uncertainty surrounding whether causes of action such as the torts of trespass to land or nuisance are available to NTHs.
P14 The NTA should be amended to provide for and establish a perpetual capital fund, overseen by the Australian Future Fund Board of Guardians, for the purposes of providing core operations funding to Prescribed Bodies Corporate.	NQLC supports the proposal that PBCs must be provided with adequate and secure core funding. There are increasing demands on PBCs to meet obligations under agreements, respond to future acts and protect recognised NTRIs. Additionally, there are increasing levels of transparency and accountability expected by NTHs, particularly where trusts have been established to hold compensation monies. However, the current level of funding provided by NIAA, which is an average of \$80,000 per PBC in Basic Support funding, is insufficient to meet even basic needs. This sum is consumed by the cost of meeting their basic administrative and compliance requirements under the <i>Corporations (Aboriginal and Torres Strait Island) Act 2006</i> (the CATSI Act).

	Some PBCs in NQLC's region have been able to supplement the Basic Support funding with administrative payments and compensation provided under ILUAs and s31 deeds (noting the firm view of NQLC that compensation monies should not have to be used for administrative functions). However, PBCs with minimal development within their determination area, or lacking in an abundance of minerals, do not enjoy these alternative streams of income. Whilst there is a cost recovery process for PBCs under section 60AB, those PBCs with limited operational capacity because they are relying solely on Basic Support funding are unable to manage the administration of issuing invoices for responding to future act notices. Lack of funding undermines NTHs ability to build organisational and economic capacity. Basic Support funding is not sufficient for full time staff and PBCs are therefore heavily reliant on directors to volunteer their time despite often being full time employees or caregivers. The only PBCs in NQLC's region that employ full time staff or have a suitable office, are those that have alternative funding sources. Furthermore, a number of PBCs in NQLC region have been left (without any funding) trying to implement tenure resolution ILUAs that were negotiated in settlement of their claim more than a decade ago. This is an extremely burdensome and complex process and in nearly all cases remains unresolved. The NTHs have been left without the benefit of what was negotiated and land remains in the hands of the State. Advice from town planners to assess the suitability of land to be transferred, and accountants to provide taxation advice and other financial responsibility as landowners is required but PBCs do not have funding to access this expertise.
P15 NTRBs and NTSPs should be permitted to use a portion of the funding disbursed by the NIAA to support PBCs in responding to future act notices and participating in future acts processes.	NQLC agrees with the proposal that NTRBs and NTSPs should be adequately funded to assist PBCs to provide detailed responses and comments to FANs. NQLC currently provides assistance to PBCs who request assistance to respond to FANs as the majority of PBCs within NQLC's representative area are not resourced to do so. In the 2024/2025 period NQLC reviewed 932 FANs and 110 Section 29 notices for multiple PBCs and claim groups which is both time consuming and resource intensive.
P16 The Australian Government should adequately fund the NNTT to fulfil the functions contemplated by the reforms in this Discussion Paper, and to provide	NQLC agrees that the NNTT should be adequately funded to fulfill functions. Additionally, if they are empowered as proposed in this Discussion Paper their funding should also include having sufficient resources to engage experts for any determination on the terms of agreements.

greater facilitation and mediation support to users of the native title system. P17 Section 60AB should be amended to: a) entitle registered native title claimants to charge fees for costs incurred for any of the purposes referred to in s 60AB; b) enable delegated legislation to prescribe a minimum scale of costs that native title parties can charge under s 60AB; c) prohibit the imposition of a cap on costs below this scale; d) impose an express obligation on a party liable to pay costs to a native title party under s 60AB to pay the fees owed to the native title party; and e) specify that fees charged by a native title party under s 60AB can be charged to the government party doing the future act, subject to the government party being able to pass through the liability to a proponent (if any).	NQLC agrees with the proposal in general to strengthen section 60AB. NTCs, in addition to NTHs, should be entitled to charge fees for costs incurred for any of the purposes referred to in section 60AB. At present whilst PBCs can recover costs by charging fees pursuant to section 60AB, NTCs cannot. Adequate funding for NTCs to respond to future act notices would encourage better engagement with the future act regime. Without funding support, it is challenging to provide a meaningful and adequate response within the limited timeframes provided in future act notices. NQLC is mindful that there are potentially substantial consequences for failing to respond in time. However, a suitable vehicle must be created to hold these fees. As NTCs are not working through a corporate structure, further consideration is needed as to who would issue invoices on behalf of the NTC and hold these sums. One solution may be the RNTBC representing the NTCs. S60AB should also be amended to allow NTCs and NTHs to recover costs incurred to deal with FADAs. Amendment is needed to discourage grantee parties abusing the FADA process.
Q27 Should the NTA be amended to expressly address the awarding of costs in Federal Court proceedings relating to the future acts regime, and if so, how?	NQLC supports the position that a proceeding in relation to a future act should be a no-cost jurisdiction.
P18 The Australian Government should establish a specifically resourced First	NQLC supports this in principle on the basis that it is a skills-based board with future act expertise as the NTA is very legalistic.

Nations advisory group to advise on implementing reforms to the NTA.	
Q28 Should the NTA be amended to provide for requirements and processes to manage the impacts of future acts on Aboriginal and Torres Strait Islander cultural heritage, and if so, how?	There is State and Commonwealth legislation that manages this. NQLC is not opposed in principle to the initial three dot points in paragraph 333 of the Discussion Paper however prescribing mandatory conditions may disadvantage groups dependent on the activity and passing power to the Minister needs considerable thought.