

Department of Planning, Housing and Infrastructure

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Review of the Future Acts Regime

NSW Government response to the Australian Law Reform Commission – Discussion Paper

August 2025

Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction

The NSW Government welcomes the opportunity to respond to the Australian Law Reform Commission (ALRC) Discussion Paper published on 22 May 2025. The Discussion Paper presents reform questions and proposals for the future acts regime under the *Native Title Act 1993* (Cth) (NTA) which would have significant implications for the native title sector in NSW. The NSW Government's comments on the Discussion Paper are provided below.

Under the Closing the Gap Implementation Plan 2022-24, the NSW Government is committed to achieving socioeconomic outcomes for Aboriginal people by providing more opportunity for social, cultural and economic connection to land and water. In NSW, native title is one of the primary methods through which these rights are recognised.

The Attorney General is the NSW Minister responsible for native title under the NTA. In this capacity, the Attorney General is responsible for managing native title claims, approving indigenous land use agreements (ILUA) and coordinating whole-of-government native title policy. The Department of Planning Housing and Infrastructure (DPHI) supports the Attorney General in this role.

Each government agency is responsible for complying with the requirements of the NTA, including the future act provisions in Division 3 of Part 2. The future acts regime enables the delivery of key land and resource management activities on land subject to native title, and Departments like the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the Department of Primary Industries and Regional Development (DPIRD) routinely interact with the regime. Other agencies like Aboriginal Affairs NSW also play a key role in shaping how NSW manages its native title responsibilities. Each of these Departments and Agencies played a key role in shaping this submission.

Executive Summary

The NSW Government is committed to the recognition and effective management of native title. This submission is informed by the NSW Government's responsibilities to native title parties across NSW, and the range of stakeholders who interact with land subject to native title through the future acts regime.

The NSW Government's comments on the Discussion Paper:

- Support self-determination and the opportunity for native title parties to realise the full extent of their native title interests through the future acts regime. NSW is committed to delivering mutually beneficial outcomes through negotiated agreement-making with native title parties.
 - Identify opportunities to streamline the administration of the future acts regime. Improving efficiency is a key priority for the NSW Government, and the ALRC is encouraged to identify opportunities to reduce administrative burden for all stakeholders under the regime.
 - Note the complexity of the current future acts regime and encourage the ALRC to consider options for simplification. The technicality of the current regime generates
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operational uncertainty, administrative complexity, and a reliance on specialist expertise, leading to a regime that is resource intensive and difficult to navigate. The ALRC should consider exploring targeted reform options that enhance the existing regime, including by considering new categories of future acts, clarifying existing categories, and addressing key areas of uncertainty.

- Note the risk associated with a complete overhaul of the future acts regime and the potential for any large-scale reforms to create new and unforeseen issues. The reforms considered by Questions 6, 14, and 16 represent fundamental shifts in the way that future acts are managed. The combined effect of these and other proposed reforms would lead to a system-wide relearning of the future acts regime and introduce enormous operational challenges for State and Territory governments. The ALRC should consider exploring reform options that clarify and enhance the existing regime.
- Reflect the State's distinctive historical, legal and cultural context where both native title and land rights frameworks operate concurrently. In considering reform, NSW encourages the ALRC to adopt a nuanced approach that strengthens the integrity of the future acts regime and considers the capacity of Aboriginal communities and governments to work constructively within other legal frameworks, including the *Aboriginal Land Rights Act 1983* (NSW).
- Recognise the Commonwealth's responsibility to provide adequate resourcing for the native title sector and not shift costs to users of the future acts regime, including the States and Territories. Some reforms proposed by the ALRC will significantly increase the workload of native title parties, representative bodies, and the States and Territories. The Commonwealth should ensure that all parties, including the States and Territories, are fully resourced to deliver on new and amended responsibilities.

NSW Comments on ALRC Reforms

Reform or Question	Description of Reform or Question	NSW Comment
Category: Promoting Fair and Equitable Agreements		
P1, P2, P3, P4, P5, Q9, Q10, Q12	Miscellaneous improvements to facilitate making and access to agreements under the NTA - P1 proposes expanding the use of standing instructions from common law holders to PBCs, supporting more rapid decision making for PBCs and enhancing the ability of the parties to make timely agreements. - P2 gives PBCs an automatic right to access through the Native Title Registrar all registered agreements for their determination areas. - P3 proposes enabling the National Native Title Tribunal (NNTT) to remove agreements from the register that have expired or ended. - P4 proposes requiring the NNTT to periodically audit the ILUA Register to fulfil this function. - P5 proposes there be an optional dispute resolution function provided by the NNTT for disputes regarding implementation of existing agreements. This proposal will reduce the burden on the Federal Court and provide a less expensive dispute resolution option for PBCs. - Q9 invites comment on whether the NTA should be amended to provide a mechanism for the assignment of agreements entered into before a positive determination is made and	- NSW supports the intent of proposals 1-5 and the ideas put forward in questions 9, 10, and 12, which seek to create administrative efficiencies and save money for native title groups and other parties. - Regarding question 10, NSW supports in-principle enabling minor amendments to ILUAs without requiring re-registration. The meaning of 'minor amendment' should be clearly defined to provide certainty for all parties. Registration provides important oversight by the Registrar being required to be satisfied of particular matters before registering an agreement. Any amendments made without re-registration would not be subject to this oversight, so categories of amendment should be carefully considered.

Reform or Question	Description of Reform or Question	NSW Comment
	which do not include an express clause relating to succession and assignment. This will resolve uncertainty. • Q10 asks whether the NTA should be amended to enable certain amendments to ILUAs without requiring re-registration, and if so which categories of amendments this should apply to. Re-registration is time-consuming and resource-intensive for all parties and does not always serve a benefit. • Q12 invites comment on whether some terms of native title agreements should be published on a publicly accessible opt-in register (with the option to redact and de-identify certain details).	
Q7	Mandatory conduct and content standards Q7 invites comment on whether the NTA should be amended to provide mandatory conduct and content standards for negotiating agreements. The ALRC argues that mandatory standards may improve the process of negotiating agreements and the quality of those agreements by addressing imbalances related to capacity and capability.	• NSW supports efforts to facilitate fair and robust native title negotiations and agreement making. The NSW Government engages in negotiations in accordance with the Model Litigant Policy and common law good faith obligations. • There is a risk that mandatory content and conduct standards under the NTA could be overly prescriptive, such that they focus resources on compliance rather than outcomes, and may not be sufficiently flexible to facilitate diverse negotiations. Standards would need to be sufficiently inclusive and flexible to be able to recognise the unique rights, interests, aspirations and location of each native title group. • Co-developed guidelines rather than mandatory standards may improve conduct without limiting the flexibility of negotiations.
Q8	Regulation of ancillary agreements	• Ancillary agreements are used in the right to negotiate process to delineate responsibilities between government, the grantee and

Reform or Question	Description of Reform or Question	NSW Comment
	Q8 invites comment on whether the NTA should be amended to expressly regulate ancillary agreements and other common law contracts under the future acts regime. Ancillary agreements are used extensively across the sector and may include confidential terms not subject to the same protections and requirements provided to ILUAs and s31 agreements under the NTA.	native title parties. Given the extent to which ancillary agreements are used across the sector, it is reasonable for the ALRC to consider whether there are aspects of these agreements that might be appropriate to regulate. NSW requests to be consulted on any options that may be developed.
Q11	Mandatory dispute resolution clause Q11 seeks comment on whether the NTA should be amended to require new agreements to include a clause requiring the parties to utilise the NNTT's dispute resolution services, including mediation and binding arbitration.	• NSW acknowledges the importance of enhancing access to alternative dispute resolution pathways and reducing the administrative burden on the Federal Court. • The ALRC should also consider the value in native title groups and other parties' ability to freely contract in instances where an alternative mediator is preferred, or where parties may not wish to engage in binding arbitration. This is generally the approach taken to dispute resolution in agreements by the NSW Government.
Q13	Reforms regarding pre-determination agreements Q13 invites comment on what reforms, if any, should be made for circumstances where a pre-determination agreement is made with a different native title party to that ultimately determined.	• NSW recognises there are circumstances in which pre-determination agreement-making can offer benefits for all parties. Pre-determination ILUAs are not widespread in NSW compared to other States. • NSW notes the issues associated with pre-determination agreements and encourages further exploration of the options for reform identified at paragraph 140. • NSW requests to be consulted on reform options as they are developed.

Category: Native Title Management Plans

Reform or Question	Description of Reform or Question	NSW Comment
Q6	Native Title Management Plans (NTMP) Q6 invites comment on whether the NTA should be amended to enable PBCs to develop management plans (subject to a process of registration with the NNTT) that provide alternative future act procedures for the determined area. The NTMP would provide a tailored process for future acts guided by the aspirations and requirements of native title holders. Where a registered NTMP is in place, the statutory procedures would be excluded from operation to the extent the NTMP covers the relevant future act. A pre-existing or subsequent ILUA may take precedence over an NTMP, depending on its terms.	- NSW recognises the importance of empowering native title parties to shape how their lands are managed, and enhancing certainty and clarity for all parties. - If this reform option is further developed it should encourage consultation between native title parties and government, to ensure that as far as possible the needs and aspirations of all parties are met. The Commonwealth may need to ensure that PBCs and representative bodies are appropriately resourced to prepare NTMPs and to consult with government to obtain input during the preparation and registration of an NTMP.
Category: Reshaping Statutory Procedures		
Q14, Q15, Q17	New Impact-Based Future Act Regime Q14 invites comment on a proposed overhaul of the future acts regime that would require an impact-based assessment of a future act, rather than the existing range of future act pathways. The proposed new regime would group all proposed future acts into two categories: Category A (lower impact) for which native title holders would have a right to be consulted (not merely to comment' as at present) and Category B (higher impact) for which native title holders would have a right to negotiate. The party proposing to do the future act would determine the impact category, and the native title party would have a right to challenge the categorisation in the NNTT.	- NSW acknowledges the intent of this proposal, but encourages further consideration on whether the proposed impact-based regime may lead to new and unforeseen issues and complexity, rather than simplifying the future acts regime. For example, the proposed reform could have significant implications for how governments conduct routine land management activities. - The ALRC may wish to consider the difficulty in assessing the impact for certain types of future acts, or where the native title rights and interests claimed are not yet known. The nature and extent of the impact of a future act on native title cannot always be known at the time of validation. It is not clear how the ALRC proposal for an impact-based regime will overcome this issue. - NSW encourages further consideration of reform options that clarify and enhance the existing future acts regime to avoid a system wide re-learning of the framework. Consideration could be

Reform or Question	Description of Reform or Question	NSW Comment
	Q15 and Q17 ask whether certain categories of future acts (such as compulsory acquisitions, the construction of facilities for the public, and legislative acts) should be excluded from the new regime and have tailored provisions instead. Q17 also asks whether the NTA should clarify that planning activities conducted under legislation (such as those related to water management) can constitute future acts.	given to reforms that enhance certainty for low impact future acts under subdivision L, where under the current regime, certain routine land management activities cannot be validly undertaken after a native title determination until an ILUA is negotiated. Consideration could also be given to the validation pathways available for time-sensitive matters including emergency response activities. • If an impact-based model is to be implemented, exclusions from the process may need to be retained for the matters flagged in questions 15 and 17 and for matters covered by sections 26A to 26D of the NTA.
P6	Reformed right to negotiate process P6 proposes a detailed new process for the right to negotiate under the NTA, that would be introduced alongside the proposed new impact-based future acts regime. The proposed process contains the following stages: • An information stage, where the proponent gives the native title party sufficient information about the proposed future act to enable them to decide whether to object or negotiate. • A negotiation stage of up to six months, which can conclude at any time if the native title party decides it will object to the future act. • An entitlement to object, in which case the NNTT would determine whether the future act can be done, and if so, subject to what conditions. • An agreement-making stage.	• NSW recognises the importance of promoting the opportunity for native title parties to express the full extent of their rights throughout the negotiation process. • NSW supports the provision of information to native title parties at an early stage in negotiations. This is a standard element of the right to negotiate process in NSW. • A right to object that is exercisable at the outset may remove the opportunity for the parties to build a relationship and seek agreement, which is a core principle of the NTA. The ALRC could consider enabling a native title party to object after a period of negotiation, to ensure there is an opportunity to negotiate in good faith before forming a view whether the proposed act can proceed. • The proposed right to object may also have implications in the context of the proposed impact-based future acts regime under question 14, which would expand the application of the right to

Reform or Question	Description of Reform or Question	NSW Comment
	An additional determination stage if the parties cannot reach agreement (this is available after 18 months from the proposed future act being notified, or after 9 months from the NNTT determining that a future act can be done – but the parties can make a joint application to the NNTT for a determination at any time). P6 also proposes that, if the NNTT determines that a future act cannot be done, the native title party would not be obliged to negotiate in relation to a substantially similar future act in the same location for another 5 years.	negotiate process and have significant implications for the conduct of activities under the regime. - NSW has concerns regarding the proposed restriction on negotiating similar acts for a period of five years. The ALRC should consider providing clarity as to what will constitute a similar act and could also consider exceptions and exclusions. - Referral to the NNTT should only take place after parties have agreed on as many matters as possible. This enables the NNTT to make a decision on targeted matters, and ensures the matter is only considered once.
P7	NNTT to determine issues by agreement of negotiating parties P7 proposes empowering the NNTT to determine specific issues by agreement of the parties to help them reach agreement on new future act proposals.	NSW supports the intent of this proposal which seeks to enhance access to dispute resolution and improve agreement making by reducing reliance on arbitral processes.
P8	NNTT conditions on Future Acts P8 proposes amending s38(2) of the NTA to empower the NNTT to impose conditions on the doing of a future act that would entitle native title parties to payments based on royalties, profits, or other income. Currently, s38(2) does not allow the NNTT to impose conditions of this type. The Federal Court drew attention to the problems raised by this restriction in <i>Gomerioi People v Santos</i> (see footnote 180 to Discussion Paper p46).	- NSW recognises the importance of avoiding litigation where possible. - The ALRC should consider whether the NNTT should be empowered to impose these conditions but only in circumstances where the parties have already agreed in-principle to royalty-based or profit-sharing conditions.

Reform or Question	Description of Reform or Question	NSW Comment
P9	Repeal of s 32 – Expedited procedure The ALRC proposes repealing the expedited procedure process under s 32. The expedited procedure enables certain future acts where the act is considered to have a minimal impact on native title. After repeal of s 32, acts currently covered by the expedited procedure would be covered by either an ILUA, an NTMP (see Q6), or the NTA’s statutory procedures.	NSW has no comment on this proposal as the expedited procedure is not currently used by the NSW Government.
P11	Future act notices lodged with NNTT P11 proposes requiring future act notices to be lodged with the NNTT, and enabling specified information about notices to be accessible through a public register.	- NSW supports reform options that strengthen data collection and data transparency in accordance with Closing the Gap, Priority Reform 4. - NSW would welcome a readily accessible data capture system that allows all parties to easily lodge notices, subject to the provision of additional resourcing from the Commonwealth to develop processes and procedures to support compliance with this proposal.
P10, Q22	Validity of future acts conditional on adherence with procedural requirements P10 proposes to amend the NTA to expressly provide that the validity of a future act is conditional on compliance with procedural requirements. Q22 asks whether, if P10 is implemented, the NTA should expressly address the consequences of invalidity.	- NSW consistently seeks to comply with procedural requirements in good faith. Conditioning validity of a future act on compliance with procedural rights could be a source of uncertainty and complexity for government and other stakeholders. Uncertainty in the future acts regime may lead to additional risk and delay for operational areas undertaking routine activities. - If this proposal were progressed, the ALRC could consider taking a more nuanced approach to validity that considers the degree, or impact, of non-compliance with procedural requirements. For instance, a minor oversight in circumstances where all reasonable

Reform or Question	Description of Reform or Question	NSW Comment
		efforts to comply with procedural requirements were made should not in itself be sufficient to affect validity.
Q16	Expanding zone of impact of a future act Q16 asks whether the NTA should be amended to enlarge the zone of impact for future acts to beyond the immediate footprint of the act.	- Introducing reforms in this area would be very difficult and would require detailed consideration and consultation. - Most features of land and water are interconnected. It will be difficult for any reform to clearly identify the boundaries of the zone of impact across a wide range of future acts. Even where boundaries are clearly identified, it may be difficult to precisely quantify the impact of the act on native title rights and interests beyond the boundary of the future act. - For example, the granting of a water licence might be required to take into account the impacts on native title rights to occupy land alongside the watercourse, which may be difficult to gauge with precision. - For land and resource management agencies, attempting to address these issues may add substantial complexity and uncertainty to the delivery of management activities, and lead to increased litigation and expense.
Q18, Q19	Test applied by NNTT when determining whether a future act can be done and what conditions to impose Q18 invites comment on what test should be applied by the NNTT when determining whether a future act can be done if the NT party objects to the act. Q19 invites comment on what criteria should guide the imposition of conditions (if any) by the NNTT on the doing of a future act.	- NSW is committed to achieving mutually beneficial outcomes through negotiated agreement making, and notes that determination by the NNTT should only be used as a last resort. - There is an existing set of criteria in s39 of the NTA and consideration of whether there is a need for reform should begin with an assessment of the operation of the current criteria. - Regarding Question 19, a framework for future act conditions may provide clarity for all parties. However, the imposition of prescriptive

Reform or Question	Description of Reform or Question	NSW Comment
	Regarding Q18, the Discussion Paper notes that: • One option would be to consider whether the native title party's consent was unreasonably withheld; • A second option would be to consider whether the doing of the future act would present a real risk of substantial and irreparable harm; and • A third option may involve amending the existing criteria in s 39 of the NTA. s 39 currently requires the NNTT to consider: ○ the effect of the act on the native title parties, and their ability to enjoy their native title rights and interests; ○ the views of the native title parties in relation to the management, use, or control of the area that will be affected by the act; ○ the economic or other significance of the act to Australia or the State or Territory; ○ any public interest in doing the act; and ○ any other matters that the NNTT considers relevant. The NNTT has discretion to decide the weighting to give each of the factors.	conditions may limit discussion and negotiations with native title parties and prevent mutually beneficial outcomes.
Q20	Reform to legislated alternative procedures	• NSW recognises that in many cases, ILUAs offer an effective means for states and territories to develop alternative future act processes with native title parties.

Reform or Question	Description of Reform or Question	NSW Comment
	Q20 invites comment regarding whether the NTA should retain the ability for States and Territories to legislate alternative procedures, subject to the approval of the Commonwealth minister.	Given that sections 43 and 43A of the NTA have rarely been used by Governments, and there is no evidence of their inappropriate or harmful application, NSW does not see a clear rationale for removing the availability of this mechanism by repealing those sections.
Q21	Reform to Subdivision F – non-claimant applications Q21 invites comment on whether the non-claimant provisions under subdivision F should be amended to provide greater protection for native title parties. Q21 suggests options including: - allowing non-claimant applications to only be made by, or for the benefit of, Aboriginal people - for non-claimant applications made by a government party or proponent, extending to 12 months the timeframe to lodge a native title application in response; or - for non-claimant applications where the proposed future act would extinguish native title, to require the government party or proponent to establish on the balance of probabilities there are no native title holders.	In some cases, a non-claimant application is the only pathway for proponents to validly undertake certain activities. Where native title is later determined over such an area, the application of the non-extinguishment principle applies to most acts, and the availability of compensation for extinguishment or impairment helps to offset negative effects. It is important for the ALRC to consider the complex relationship between native title and the <i>Aboriginal Land Rights Act 1983</i> (NSW) (ALRA) in NSW. Subdivision F is used by Local Aboriginal Land Councils (LALC) in NSW to deal with their land pursuant to s42 of the ALRA. Any reform to Subdivision F needs to acknowledge the complex landscape of Aboriginal rights and interests in NSW to ensure all parties can have those interests recognised fairly. NSW supports continued engagement with Aboriginal communities, native title holders, and land rights bodies to ensure any amendments are both workable and respectful of the diverse expressions of Aboriginal rights and interests across the State. The NSW Government supports the existing framework with respect to non-claimant applications and requests to be consulted on any proposed reform options, acknowledging the importance of this framework for stakeholders.
Q23	Further detail on future act notice content	NSW supports including detailed information in future act notices and would welcome additional guidance, either within the NTA or through external guidance.

Reform or Question	Description of Reform or Question	NSW Comment
	Q23 invites comment on whether the NTA should be amended to prescribe in more detail the information that must be included in a future act notice – and if so which information. This proposal arises from feedback from native title parties on issues with the quality of future act notices.	
Category: Compensation and other Payments		
P12	Full and final compensation P12 proposes amending sections 24EB and 24EBA of the NTA to provide that compensation under an agreement for future acts subject of the agreement is only full and final where explicitly provided by the agreement, and where the amounts are in fact paid. The Discussion Paper explains that this proposal is directed at ensuring that compensation for a future act is still payable where the parties decide to defer the question of compensation until after an agreement is executed. The proposal is intended to apply to both ILUAs and ‘right to negotiate’ agreements on future acts.	NSW supports the intent of this proposal which seeks to avoid unintended consequences of the current drafting of the NTA and provide greater certainty and security to the parties to an agreement.
P13	Compensation for invalid future acts P13 proposes to amend the NTA to establish a statutory entitlement to compensation for invalid future acts.	- There is a complex interplay between the NTA and common law remedies for invalid future acts. NSW would encourage further analysis as to how a new statutory entitlement would operate and be applied. - NSW requests to be consulted on proposed reform options as they are developed.

Reform or Question	Description of Reform or Question	NSW Comment
	(The Discussion Paper notes (p59): “While the note to s50(1) of the NTA contemplates the ability for native title holders to seek compensation or damages for invalid acts under the general law, a statutory entitlement to compensation would provide greater certainty for all parties. Creating a statutory entitlement may also address other issues that make common law remedies difficult to access. For example, rather than requiring each element of the tort of trespass to be established (including proof of possession or occupation), an invalid act would give rise to a compensation entitlement without a requirement for the specific common law elements to be proved. In addition, statutory limitation periods that apply to common law actions would not apply.”)	
Q24, Q25	Future act payments Q24 invites comment on whether, for specific future acts, the NTA should be amended to provide that an amount (to be known as a ‘future act payment’) is payable prior to or contemporaneously with the doing of a future act – either by agreement of the parties, or by determination of the NNTT, or in accordance with a formula prescribed by regulations, or in accordance with some other method. Q25 invites comment on how ‘future act payments’ should interact with compensation payable under Part 2 Division 5. (The Discussion Paper notes (p55-56): “Compensation under the NTA is only payable through an agreement negotiated by the parties or a compensation application in the Federal Court under	• As the ALRC itself notes, there are practical issues which require careful consideration before exploring reforms in this area. • NSW requests to be consulted on reform options as they are developed.

Reform or Question	Description of Reform or Question	NSW Comment
	Part 2 Division 5. This means that in the absence of agreement, the NTA contemplates compensation for future acts being determined and paid only: • after a compensable act has been done or commenced; • at a potentially indeterminate time in the future; • after the PBC or native title holders commence proceedings in the Federal Court; and • in accordance with a determination of the Federal Court. Furthermore, under some laws, where the full impact of some kinds of land use is not knowable before the activity commences (such as mining projects), non-native title rights holders are entitled to seek additional compensation during the course of the land use if compensation has not previously been paid or agreed for the additional impacts. The NTA, by contrast, provides that compensation is only payable once for acts that are essentially the same. So, for example, if the future act is the grant of a mining tenement, this presumably means that compensation is payable once for the grant of the tenement. However, several practical issues make it difficult to determine and quantify the amount of native title compensation payable for some future acts at the time the acts are done. These include: • the fact that the full compensable effect on native title rights and interests arising from a future act, including cultural loss, may not be ascertainable until after the future act has been completed or been in place for some time; • the lack of case law and principles for quantifying compensation for future acts; and	

Reform or Question	Description of Reform or Question	NSW Comment
	in the context of the right to negotiate and future act determination applications, the inability of the NNTT to ‘determine’ compensation payable under s 50 of the NTA.”)	
Q26	New agreement for native title compensation and future act payments Q26 invites comment on whether the NTA should provide for a new form of agreement (other than an ILUA) capable of recording the terms for a future act payment and compensation payment for future acts. (Presently, if parties wish to agree compensation and provide certainty that the payment of compensation is full and final, the only option would be an ILUA. Given the often high costs of negotiating, authorising, and registering an ILUA, Q26 asks whether the NTA should be amended to provide for a new form of agreement.)	- NSW is committed to arriving at mutually beneficial outcomes through negotiated agreements. - While there may be possible benefits associated with a new form of agreements for compensation associated with future acts, the ALRC should consider whether ILUAs already have the capacity to serve this function, and whether the addition of new forms of agreement may add complexity. It is therefore important to properly understand the nature of any barriers to using the existing mechanism.
Category: Resourcing, Costs and Implementation		
P14, P15, P16	Funding for PBCs and the NNTT - P14 proposes amending the NTA to establish a perpetual capital fund overseen by the Australian Future Fund Board of Guardians to provide core operations funding for PBCs. - P15 would permit Native Title Representative Bodies (NRTB) to disburse funds to PBCs to support them in responding to future act notices and participating in future act processes.	- NSW acknowledges the intent of these proposals and notes the Commonwealth’s responsibility to provide sufficient funding for PBCs and the NNTT to fulfil their responsibilities. - NSW welcomes any mechanism by which the Commonwealth is better able to meet its responsibilities to fund PBCs.

Reform or Question	Description of Reform or Question	NSW Comment
	P16 proposes additional funding from the Commonwealth Government for the NNTT in light of the additional NNTT functions recommended by the ALRC.	
P17	Native title claimant fees under s60AB P17 proposes to amend s60AB to allow registered native title claimants (not just PBCs) to claim fees for negotiating ILUAs, negotiating s31 agreements, commenting on future acts, and exercising procedural rights in relation to future acts. The proposal would also enable a minimum scale of costs to be prescribed and impose an express obligation on governments to pay these fees, subject to being able to pass through the liability to the future act proponent (if any).	- NSW acknowledges the intent of this proposal but requests further information regarding administration and implementation. - NSW requests to be consulted on reform options as they are developed.
P18	First Nations Advisory Group P18 proposes establishing a First Nations advisory group to advise on the implementation of reforms recommended by the ALRC, including the appropriate participatory process in respect of legislation.	NSW supports options that empower Aboriginal people to advise on reforms under the NTA.
Q27	Costs in Federal Court proceedings regarding future acts Q27 invites comment on whether the NTA should be amended to expressly address the awarding of costs in proceedings relating to future acts, and if so how. The ALRC notes a lack of clarity on how native title costs are dealt with by the Federal Court, which may discourage native title parties from initiating proceedings. The ALRC states that options include:	NSW supports further clarity on the matter of costs in Federal Court proceedings relating to future acts.

Reform or Question	Description of Reform or Question	NSW Comment
	- clarifying that in future acts proceedings each party ordinarily bears its own costs; or - implementing a ‘modified no costs’ jurisdiction which would give the court discretion, in cases where the native title party is successful, to award costs in favour of the native title party if that is appropriate having regard to all of the circumstances of the case.	
Category: Aboriginal and Torres Strait Islander Cultural Heritage		
Q28	Managing impact on cultural heritage Q28 invites comment on whether the NTA should be amended to provide for requirements and processes to manage impacts of future acts on Aboriginal and Torres Strait Islander cultural heritage.	- NSW acknowledges the need for reform around the protection, conservation and management of Aboriginal cultural heritage. However, this raises questions about the interaction of the NTA with State and Territory cultural heritage regimes, not just its interaction with the relevant Commonwealth legislation. Detailed consultation with States and Territories is required on this issue. - NSW has a complex and unique cultural governance landscape shaped by the effects of colonisation and multiple legislative frameworks, including both the NTA and the ALRA. The ALRC should consider the complex and unique cultural governance landscape in NSW and ensure that NSW Aboriginal groups and organisations which are stakeholders in cultural heritage are consulted on potential reform options.