



GMYPPBC

GUNGGANDJI-MANDINGALBAY YIDINJI PEOPLES
PRESCRIBED BODY CORPORATE ABORIGINAL CORPORATION

20 November 2025

Australian Law Reform Commission
Mr Tony McAvoy SC
PO Box 209
Flinders Lane
Victoria 8009
Via Email: nativetitle@alrc.gov.au

Dear Commissioner

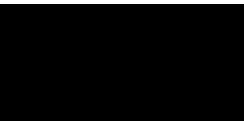
SUBMISSION IN RESPONSE TO THE REVIEW OF THE FUTURE ACTS REGIME

We refer to our email communications dated 5 November 2025 and thank you for allowing the Gunggandji-Mandingalbay Yidinji Peoples Prescribed Body Corporate Aboriginal Corporation RNTBC ('the GMYPPBCAC') to make a late submission.

On behalf of the GMYPPBCAC Board of Directors, please refer to the submission attached for review and consideration.

We are happy to respond to any queries or provide further information in relation to this submission as required.

Yours sincerely



Helen Tait

Executive Officer

Email: 



Submission – Review of the Future Acts Regime

To: Australian Law Reform Commission (“ALRC”)

From: Gunggandji-Mandingalbay Yidinji Peoples PBC Aboriginal Corporation RTNBC (“GMYPPBC”)

Re: Response to ALRC Discussion Paper 88 – Late Submission on an ILUA Technicality

Date: 20 November 2025

Part 1 – Background

1.1 Although the period for submissions has closed, the ALRC has indicated that it would accept this late submission from GMYPPBC.

1.2 The submission requests the ALRC to include a recommendation in its report to the Commonwealth Attorney-General, that a technical amendment be made to Part 2 Division 3 of the *Native Title Act 1993* (Cth) (“NTA”). The purpose is to improve the utility of body corporate agreement Indigenous Land Use Agreements (“ILUA”), as they relate to certain types of land dealings and associated land uses, by or for the benefit of native title holders.

1.3 GMYPPBC is a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). In respect of proprietary interests in land, it has two separate roles and functions with separate associated powers, duties and responsibilities:-

- (a) RNTBC for Native Title – GMYPPBC is a prescribed body corporate nominated to that role under Order 13 in Native Title Determination QCD2012/008 (Combined Mandingalbay Yidinji-Gunggandji Peoples) and registered in that respect on the National Native Title Register. Hence it is a registered native title body corporate (“RNTBC”). Under the determination it holds native title rights and interests in the determination area as trustee for the common law native title holders (“native title holders”).
- (b) Grantee of Aboriginal Land – GMYPPBC is the grantee of a deed of grant in fee simple under the *Aboriginal Land Act 1991* (Qld) (“Aboriginal Land”) for native title holders as their trustee.



GMYPPBC

GUNGGANDJI-MANDINGALBAY YIDINJI PEOPLES
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- 1.4 Such dual arrangements are a common feature in Queensland, often established in conjunction with the consent determination of native title claims. Similar arrangements can apply in other states.
- 1.5 Amongst other things a grantee of Aboriginal Land has extensive statutory powers under the *Aboriginal land Act 1991* (“ALA”), to deal with the Aboriginal Land. One of the main policy objectives of the ALA is to facilitate economic and cultural land use, including home ownership. This can be achieved by the grantee creating leases, licences and other interests in land including to, or for the benefit of, individuals from amongst the native title holders (“land dealings”).
- 1.6 Given the nature and purpose of the land dealings, they are considered to be future acts for purposes of the NTA. To be valid future acts, each land dealing must be covered by one of the provisions of the future act regime. Many of the provisions are not, according to their terms, applicable to such land dealings; however any future act “...will be valid if the parties to [ILUAs] consent to it being done and, at the time it is done, details of the agreement are on the Register of Indigenous Land Use Agreements” (s24AA(3)).
- 1.7 In particular, Part 2 Division 3 Subdivision B NTA allows RNTBCs for an ILUA area to be parties (indeed under s24BD(7) all such RNTBCs *must* be parties), to a Body Corporate Agreement ILUA (“body corporate agreement”). In limited circumstances there must be a government party to such agreements but, other than that, “... any other person or persons may be parties.” (s24BD(3)).
- 1.8 GMYPPBC has developed a proposed body corporate agreement specifically designed to contain future act consents to land dealings for purposes of the kind outlined in paragraph 1.5 above. The agreement contains innovative mechanisms that would enable GMYPPBC, as the grantee of Aboriginal Land, to enter into land dealings with individuals, sub-groups and corporations drawn from the native title holders as valid future acts. The objective, amongst other things, is to help facilitate their economic, cultural and home ownership aspirations.
- 1.9 As the proposed body corporate agreement contains consent to classes of future acts (as permitted by Section 24BB(a)), there are no specific persons who, as parties to prospective land dealings, should be parties to the agreement. The body corporate agreement instead creates a scheme by which consent is given to prospective land dealings that fall within the prescribed classes and (as there is no statutory need for a government party) the agreement envisages the appropriate parties being GMYPPBC in its distinctly separate capacities – as RNTBC for native title purposes (S24BD(1)) and as grantee of Aboriginal Land (or as the “land holder”) (s24BD(3)).
- 1.10 GMYPPBC has liaised with the National Native Title Tribunal (“NNTT”) about the requirements for registration of the body corporate agreement. The NNTT raises no objection as to its purpose or the intended working of the consents it contains. However, it has anticipated that the agreement may not meet NTA requirements for registration on what is effectively a technical ground.



GMYPPBC

GUNGGANDJI-MANDINGALBAY YIDINJI PEOPLES
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1.11 The difficulty relates to an interpretation of Section 24BA which provides that “**an agreement meeting the requirements of Section 24BB to 24BE is an indigenous land use agreement**” (emphasis added). The word “agreement” is not defined in the NTA. However s24EA(1) provides as follows:

“Section 24EA Contractual effect of registered agreement

(1) While details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, in addition to any effect that it may have apart from this subsection, as if:

(a) it were a contract among the parties to the agreement; and

(b) all persons holding native title in relation to any of the land or waters in the area covered by the agreement, who are not already parties to the agreement, were bound by the agreement in the same way as the registered native title bodies corporate, or the native title group, as the case may be.

Note: Section 199B specifies the details of the agreement that are required to be entered on the Register.

Only certain persons bound by agreement

(2) To avoid doubt, a person is not bound by the agreement unless the person is a party to the agreement or a person to whom paragraph (1)(b) applies.

Legislation etc. to give effect to agreement not affected

(3) If the Commonwealth, a State or a Territory is a party to an indigenous land use agreement whose details are entered in the Register of Indigenous Land Use Agreements, this Act does not prevent the Commonwealth, the State or the Territory doing any legislative or other act to give effect to any of its obligations under the agreement.”

1.12 Apparently drawing on common law principles relating to party requirements for legally binding agreements, the NNTT is of the opinion that, despite the separate native title and land holder capacities in which it seeks to enter into the proposed body corporate agreement, GMYPPBC is only one legal entity and, as such, can not legally agree or otherwise contract with itself.



GMYPPBC

GUNGGANDJI-MANDINGALBAY YIDINJI PEOPLES
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Part 2 – Specific Submissions

2.1 Given that RNTBCs are afforded separate statutory roles, functions, powers and responsibilities for native title (including as mandatory parties to body corporate agreements) and as land holders (including granting estates and interests in land to individuals and sub-groups amongst the native title holders), Part 2, Division 3 Subdivision B NTA should be amended to clarify that, despite any other provision in the NTA, a body corporate agreement ILUA which has an RNTBC as a party in different capacities, is an agreement for purposes of that Subdivision.

Example:

Amend s24BA so the existing provision is numbered sub-section (1).

Insert a new s24BA(2) along the following lines:-

“s24B(2) Despite anything else in this Act, where a registered native title body corporate is specified in an agreement to be:

- (a) a party to the agreement for purposes of Section 24BD (1); and
- (b) a party to, or participating in, the agreement in another capacity (such as holding an estate in land for the persons, or such group of persons, holding the common or group rights comprising the native title)

there is an agreement for purposes of subsection (1) even where no other person or persons are parties.”

2.2 It is noted later in this submission that the Discussion Paper contains a proposal about a new mechanism for providing validity for future acts involving Native Title Management Plans (“NTMP”). It appears the intended overall effect of NTMPs is similar to the proposal in this submission that certain body corporate agreements should need only an RNTBC as a party. The stated objectives of NTMPs seem however more directed to engagement, development opportunities and collaboration with between native title parties and industry/government.

2.3 In addition to the submission in paragraph 2.1, it is proposed that if NTMPs are introduced into the future act regime, the legislative detail specifically tailor their use to the integration of land dealings of the kind described in Part 1 of this submission and future act validation.

2.4 Given uncertainties about whether the legislature would adopt either of these submissions, it is requested that both proposals be contained in the ALRC’s report to the Attorney-General.



Part 3 – Supporting Observations

- 3.1 The Explanatory Notes for the ALA say that a core policy objective of the legislation is to enable the grant of mainstream estates and interests in land to Aboriginal People to help achieve their economic development, home ownership and cultural aspirations.
- 3.2 Section 39 ALA specifically empowers the State Minister to appoint an RNTBC to be the grantee of land under a deed of grant in fee simple. Although the fee simple is not alienable, the grantee holds the freehold estate as trustee for the native title holders and is empowered to grant leasehold estates and other interests in particular parcels of land – including for the benefit of individuals and groups.
- 3.3 Although native title rights and interests “... are rights in land and waters [and] ... in that sense quintessentially proprietary in nature,”¹ it has also been said that “... native title is a sui generis right or interest [and]... to describe native title as a proprietary right (or as equating with a proprietary right) is “artificial and capable of misleading.”²
- 3.4 Native title rights are of course themselves inalienable and comprise “...a communal bundle of rights and not an individual proprietary right.” (Mansfield J in the *Griffiths* trial judgment at [219]).
- 3.5 The ALA land dealing regime addresses these native title limitations by enabling the creation of an inalienable freehold estate held by an RNTBC over all, or part, of its determination area out of which economic, housing and culturally empowering land interests over particular parcels and for particular persons and purposes can be made.
- 3.6 Given that the creation of those land interests will be future acts, it is crucial to the efficient and effective working of such indigenous land dealing regimes, that there be an equally effective and efficient way of enabling the land interests to be created as valid future acts. Given the overall circumstances described above and a general lack in the current future act regime for effecting their validity, a body corporate agreement utilising a class-based and conditional approach to future act consent, is the most effective current NTA vehicle for achieving that outcome.
- 3.7 ILUAs are already used to address the State’s grant of such freehold estates on a non-extinguishment basis and, given its position as grantor, it is appropriate that the State be a party to those ILUAs.
- 3.8 However, once the freehold estate has been granted to an RNTBC, it is appropriate that the RNTBC alone – albeit acting in its separate native title and land holder capacities and through consultation with, and consent from, native title holders – make such body corporate agreements that suit the particular circumstances of the land and the Aboriginal people concerned. There is no policy need for another person or a separate legal entity to be a party.

¹ *Yunupingu on behalf of the Gumatj Clan or Estate Group v Commonwealth of Australia* [2023] FCAFC 75

² Mansfield J in *Griffiths v Northern Territory of Australia (No 3)* [2016] FCA 900 at 217-221



GMYPPBC

GUNGGANDJI-MANDINGALBAY YIDINJI PEOPLES
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- 3.9 This submission is additional to, but consistent with, Proposal 1 in the Discussion Paper. It seeks to strike a balance between the binding nature of ILUAs on native title holders and the need to ensure consent is obtained, along with the improvements and efficiencies in extending the ability of RNTBCs to obtain standing instructions to enter into certain types of agreements.
- 3.10 The Discussion Paper acknowledges the “*special characteristics of agreements under the NTA*” (paragraph 100). There should be no policy objection to the potential alteration of common law agreement/contract requirements which this submission may entail.
- 3.11 The submission is consistent in concept and effect to the Discussion Paper proposal for new NTMPs. The submission adds to the NTMP proposal in helping address the ILUA deficiency described in paragraph 48 of the Discussion Paper. It describes how, currently, specific or tailored future act processes can only be developed through an ILUA agreed between native title holders and the relevant government, or by State or Territory legislation relating to alternative processes for future acts under Part 2 Division 3 Subdivision P NTA.
- 3.12 Paragraphs 49 and 50 in the Discussion Paper say that an NTMP would be made by an RNTBC for its determination area subject to the consent of the native title holders, promote engagement between proponents and native title holders where appropriate and signal where there are developmental opportunities on country that native title holders may be interested in pursuing in collaboration with industry and government. It is appropriate that the objects and effects of NTMPs be extended to Indigenous land dealings in the way GMYPPBC has submitted.
- 3.13 This submission will enable body corporate agreement ILUAs to have similar effect – particularly in streamlining coordination between State Indigenous land dealing regimes and the future acts regime.