

PAPER REVIEW OF THE FUTURE ACTS REGIME

Native Title

Under the Native Title Act 1993, native title holders possess inherent rights derived from traditional laws and customs, which in certain circumstances may prevail over government interests and native title is recognised as a proprietary right that predates and exists independently of government legislation.

These rights include exclusive possession, control over access to land, and the protection of cultural heritage where native title holders possess rights that take precedence over government interests, particularly in relation to land use, cultural heritage protection, and resource management.

Governments must negotiate with native title holders before undertaking activities that may impact these rights, ensuring compliance with statutory obligations, case law precedents, and international Indigenous rights frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples and ensuring compliance constitutional protections.

When the Native Title Act **was** established to recognise and protect Indigenous Australians' land rights. However, enforcement and implementation can vary depending on **government** policies and legal interpretations. Some critics argue that the Act **allows** governments to avoid enforcing certain native title claims, particularly when conflicts arise with development projects or government interests.

Future acts and Indigenous Land Use Agreements (ILUAs) under the Native Title Act 1993

Future acts may be validly undertaken under a registered Indigenous Land Use Agreement (ILUA) or through other provisions of the future acts regime. Under the Native Title Act 1993, ILUAs provide a framework for negotiating and formalizing agreements between native title holders and other parties, ensuring that future acts affecting native title rights are conducted lawfully and with mutual consent. The integration of future acts and ILUAs within the legislative framework facilitates certainty for all stakeholders while upholding native title protections.

Under the Native Title Act 1993, native title parties are generally not granted a formal right of veto. However, an effective veto may arise in circumstances where an Indigenous Land Use Agreement (ILUA) is the only mechanism available to validate a future act, and the government chooses not to exercise compulsory acquisition powers. Since ILUAs are entirely voluntary agreements, native title holders retain the ability to withhold consent, thereby preventing the future act from proceeding.

Where a future act is undertaken without valid compliance under the Native Title Act 1993, native title holders may be entitled to seek legal remedies. These remedies may include applying for an injunction to prevent the act from proceeding or pursuing damages for trespass. While case law on this issue remains limited, the legal framework supports native title holders in asserting their rights and ensuring government parties adhere to statutory obligations.

Generally, a registered native title claimant represents a group in negotiations, but their ability to approve or reject an ILUA may be limited. In accordance with Aboriginal law and custom, a clan/group may hold traditional authority over the land in question.

This reflects the principle that native title is often exercised collectively, and identify clan/group owners may have authority beyond formal registration processes. Although the clan is not formally recognized as the registered native title claimant under the Native Title Act 1993 (Cth.), its standing in the community and ancestral custodianship grants it decision-making authority.

Consequently, any Indigenous Land Use Agreement (ILUA) affecting this land requires the formal acknowledgment and consent ensuring that traditional laws and customs are respected in the agreement-making process. As such, any Indigenous Land Use Agreement (ILUA) affecting this land requires the formal endorsement of the a clan/group as a signatory, ensuring that the agreement respects and upholds traditional governance structures. The endorsement represents the broader recognition of traditional governance structures that predate statutory legal frameworks.

In accordance with Aboriginal law and cultural governance, the native title holders hold traditional authority over the land in question. While the Traditional Owners Settlement Act provides a framework for agreements between traditional owners and the state, the Federal Court has imposed restrictions that prevent the recognition of an Indigenous Land Use Agreement (ILUA) **in this instance**.

This limitation highlights the ongoing tension between statutory legal frameworks and the recognition of traditional decision-making authority in land agreements. The inability to register the ILUA under the current legal framework underscores the need for legislative reform to ensure that native title holders rights are adequately recognized and respected.

A note on terminology

A determination that native title exists, sometimes called a ‘positive determination’, must specify certain details about the persons holding native title, the Under the Native Title Act 1993, a Prescribed Body Corporate (PBC) is required to manage native title rights and interests on behalf of native title holders. However, the PBC itself **cannot** be a native title holder—it is a separate legal entity that acts as a trustee or agent for the native title holders.

Native Title Holders & Prescribed Bodies Corporate (PBCs) recognised, common law holders must nominate a PBC to act on their behalf. However, a PBC is not a native title holder under Aboriginal law, because native title is inherently communal and based on traditional law and customs—not corporate structures.

It's important to note that native title is legally recognized through common law holders, not corporations. A corporation can manage native title rights, but it does not possess native title itself. It operates under specific governance rules to ensure native title holders' interests are protected and it operates as trustees or agents for native title holders, ensuring compliance with statutory requirements while respecting traditional law and customs.

Procedural rights

In accordance with the Native Title Act 1993 (Cth.), a Prescribed Body Corporate (PBC) is responsible for managing native title rights and interests on behalf of the determined native title holders. However, concerns arise when a PBC does not adequately notify or consult native title holders regarding decisions that may impact their rights. Failure to provide timely and transparent communication undermines the principles of informed consent and traditional governance. This lack of notification may result in decisions being made without the full participation of those with a vested interest in the land, leading to disputes and challenges to the legitimacy of agreements.

Addressing this issue requires stronger accountability measures to ensure that native title holders are properly informed and engaged in decision-making processes. Where a future act triggers the right to negotiate under the Native Title Act 1993, the relevant state or territory government must notify the public and any registered native title claimant or Prescribed Body Corporate (PBC) of the proposed grant.

In cases where a PBC fails to comply with its obligations to pass on information regarding the future act, native title holders may seek legal remedies to ensure procedural fairness. The government remains responsible for ensuring that affected native title parties are adequately informed and engaged in negotiations, even in instances of PBC non-compliance.

Right to Negotiate

Where a future act triggers the right to negotiate under the Native Title Act 1993, the relevant state or territory government must notify the public and any registered native title claimant or Prescribed Body Corporate (PBC) of the proposed grant.

In accordance with Section 39 of the Native Title Act 1993 (Cth.), the National Native Title Tribunal (NNTT) must consider the impact of a future act on native title holders' rights and interests, including its effect on cultural heritage, traditional practices, and areas of significance. However, when a party fails to negotiate in good faith, the NNTT is unable to make a determination, leaving native title holders vulnerable to decisions that may disregard their cultural heritage.

Even if the NNTT determines that a future act cannot proceed due to its detrimental impact, the Commonwealth Minister retains the authority to override this decision, potentially allowing mining activities that cause irreversible damage to sacred sites and cultural landscapes.

This highlights the urgent need for stronger protections to ensure that native title holders' rights and cultural heritage are not compromised by external interests." However, the absence of veto power over mining projects significantly weakens their ability to protect sacred sites and traditional lands.

The current legal framework prioritizes economic interests over Indigenous rights, allowing mining operations to proceed despite opposition from native title holders. To ensure meaningful participation and protection of cultural heritage, legislative reforms must strengthen the negotiation process by requiring free, prior, and informed consent (FPIC) from native title holders before any mining activity is approved. Additional mechanisms must be established to prevent mining projects that pose irreversible damage to sacred sites, ensuring that native title holders retain authority over their ancestral lands. Strengthening these protections is essential to uphold Indigenous sovereignty and safeguard cultural heritage for future generations.

Expedited procedure

The Native Title Act 1993 (Cth.), native title holders have the right to be informed and consulted on matters affecting their land and cultural heritage. However, when a Prescribed Body Corporate (PBC) fails to provide timely and transparent information regarding a Section 29 notice and the expedited procedure, native title holders are denied the opportunity to exercise their procedural rights.

This lack of communication undermines the principles of informed consent and traditional governance. Furthermore, when native title holders formally reject the expedited procedure, but the PBC department fails to act, it results in the erosion of native title rights and allows tenements to be granted without proper negotiation.

This failure to uphold native title holders' interests highlights the urgent need for stronger accountability measures to ensure that PBCs fulfill their obligations and protect the rights of native title holders.

Compensation for interference with or extinguishment of native title

Under the Native Title Act 1993 (Cth.), native title holders are entitled to compensation for valid future acts that interfere with or extinguish their native title rights and interests. However, despite this legal entitlement, compensation applications remain rare, and the process of accessing compensation is complex and restrictive.

The lack of enforceable mechanisms has resulted in native title holders struggling to obtain fair redress for the loss of their land and cultural heritage. To uphold the principles of justice and Indigenous land rights, legislative reforms must ensure that compensation is automatically payable when native title is impacted, rather than requiring native title holders to navigate an onerous legal process. Strengthening these protections is essential to safeguard Indigenous sovereignty and ensure that native title holders receive fair and just compensation for the loss of their rights.

Other relevant laws and frameworks

The future acts regime under the Native Title Act 1993 (Cth.) must be reformed to ensure that native title holders have meaningful authority over decisions affecting their land and cultural heritage. The current framework allows for inconsistent protections across jurisdictions, leaving sacred sites vulnerable to destruction. Additionally, the ability of government entities to override native title objections undermines the principles of free, prior, and informed consent (FPIC).

Legislative reforms must establish uniform cultural heritage protections, strengthen native title holders' rights in land use negotiations, and prevent government discretion from eroding Indigenous sovereignty. Without these changes, the future acts regime will continue to prioritise economic interests over the preservation of native title holders cultural heritage.

It's clear that the future acts regime under the Native Title Act 1993 (Cth.) is deeply intertwined with various state, territory, and Commonwealth laws, particularly those governing land rights, mining approvals, and cultural heritage protections. The complexity of these overlapping legal frameworks often creates challenges for native title holders seeking to protect their rights.

Key Issues:

- **Inconsistent Cultural Heritage Protections:** Each state and territory has
- different laws regarding Aboriginal and Torres Strait Islander cultural heritage, leading to varying levels of protection.
- **Limited Native Title Authority:** Some land rights regimes operate separately from native title, meaning native title holders may not have full control over decisions affecting their land.
- **Government Discretion:** The Commonwealth Minister retains the power to override certain decisions, potentially allowing mining or development projects to proceed despite objections from native title holders.

Reform Efforts: The First Nations Heritage Protection Alliance is working with the Australian Government to strengthen cultural heritage protections, but legislative changes are still in progress.

The Racial Discrimination Act 1975 (Cth)

The future acts regime under the Native Title Act 1993 (Cth.) must uphold the principles of equality and non-discrimination by ensuring that the Racial Discrimination Act 1975 (Cth.) (RDA) remains fully applicable. Disapplying the RDA would create a legal framework where native title holders are treated differently from other landholders, undermining their rights and protections.

The suspension of the RDA in past legislative measures has led to significant injustices, including the erosion of native title rights and the prioritization of economic interests over Indigenous sovereignty. To ensure a fair and balanced future acts regime, legislative reforms must reinforce the right to free, prior, and informed consent (FPIC) and prevent government discretion from overriding native title objections. Maintaining the RDA within the future acts regime is essential to safeguarding Indigenous land rights, cultural heritage, and self-determination.

Maintaining the RDA within the future acts regime is essential to safeguarding Indigenous land rights, cultural heritage, and self-determination. Additionally, ensuring that native title holders have equal procedural rights in negotiations will strengthen their ability to protect their land from exploitation and ensure that future acts do not disproportionately disadvantage those rights.

Resourcing and capacity and agreement-making

The Native Title Act 1993 (Cth.), meaningful participation in agreement-making requires that both the Prescribed Body Corporate (PBC) and proponents ensure that native title holders have access to adequate resources and capacity-building support. Resourcing constraints disproportionately impact native title holders, limiting their ability to engage in negotiations on an equal footing. The responsibility to provide sufficient resources must be shared, ensuring that native title holders can fully exercise their rights and make informed decisions.

Without equitable access to funding, legal expertise, and negotiation support, agreement-making risks reinforcing power imbalances rather than achieving fair and just outcomes. Strengthening resource commitments from both PBCs and proponents is essential to uphold the principles of free, prior, and informed consent (FPIC) and ensure that agreements reflect the genuine interests of native title holders. Additionally, best practices in agreement-making should include capacity-building initiatives, ensuring that native title holders have the necessary skills and knowledge to engage effectively in negotiations.

The right to negotiate

The right to negotiate under the Native Title Act 1993 (Cth.) is intended to provide native title holders with a meaningful opportunity to engage in discussions regarding future acts that may impact their rights and interests. However, the effectiveness of this process is significantly constrained by the limited scope of future acts covered and the six-month negotiation window, which often proves insufficient for complex negotiations involving multiple stakeholders.

Additionally, the burden of proving that a party has failed to negotiate in good faith is disproportionately placed on native title holders, creating a procedural barrier that undermines their ability to challenge unfair negotiations. The absence of clear and enforceable standards for assessing good faith negotiations allows proponents to exploit procedural weaknesses, leading to agreements that may not adequately protect native title rights.

To strengthen the integrity of the negotiation process, legislative reforms must extend the negotiation timeframe, establish clear criteria for assessing good faith negotiations, and shift the burden of proof to ensure that proponents demonstrate compliance with fair negotiation principles. Without these changes, the right to negotiate risks becoming a procedural formality rather than a genuine mechanism for protecting native title interests.

Expedited procedure is problematic

The expedited procedure under the Native Title Act 1993 (Cth.) presents significant challenges due to inconsistencies between federal, state, and territory Aboriginal and Torres Strait Islander cultural heritage laws. While native title holders are expected to engage in the process, the lack of uniformity in legislative protections places an undue burden on them to navigate conflicting legal frameworks. This issue is not a failure of native title holders but rather a systemic problem arising from fragmented government policies.

Federal, state, and territory governments must ensure that cultural heritage protections are consistent, enforceable, and aligned with international standards, including the principles of free, prior, and informed consent (FPIC). Without harmonised laws, the expedited procedure risks undermining Indigenous rights, allowing development projects to proceed without adequate safeguards for sacred sites and cultural heritage.

Legislative reform is urgently needed to establish a unified framework that guarantees stronger protections for Aboriginal and Torres Strait Islander cultural heritage, ensuring that government policies do not erode Indigenous sovereignty. The future acts regime, and the legislation that creates it, is complex. This can make the regime difficult to understand, particularly for people who are not lawyers.

Complexity also makes it difficult for lawyers to explain the regime and advise their clients in a way that is easy to understand. It is not clear whether governments keep centralised records of future acts. This means native title parties must independently track their rights (including procedural rights or rights to seek compensation) for future acts on their Country.

The lack of a centralised record of future acts also presents challenges for whole of Country compensation claims. Similarly, it is not clear whether state and territory government departments have central oversight mechanisms for complying with the future acts regime. This can mean native title parties have different experiences with different government departments. These issues speak to a general lack of transparent data about the future acts regime. This makes it difficult to understand the full scale of future acts activity and assess how the future acts regime is operating

The National Native Title Tribunal (NNTT) requires native title holders to provide sufficient evidence to demonstrate that the expedited procedure should not apply to a future act.

However, significant barriers exist that prevent native title holders from effectively presenting their objections. One major challenge is the resourcing constraints and the high volume of notifications, which often leave native title holders unable to file evidence or submissions. As a result, the NNTT routinely decides

The National Native Title Tribunal (NNTT) has a structured process for handling objections to the expedited procedure. If a native title holder objects within four months of the notification day, the NNTT must conduct an inquiry to determine whether the expedited procedure applies or not. If the Tribunal decides that the expedited procedure does not apply, the right to negotiate process must be followed.

However, concerns have been raised about the Tribunal's inactivity in certain cases. The Tribunal encourages early lodgment of objections and has a case management approach to promote resolution. If an objection is lodged, a Tribunal member is appointed to hear the matter, and a preliminary conference is scheduled to discuss the status of the objection and possible resolutions

The process of native title objections is a critical mechanism for ensuring the rights of native title holders are respected. However, concerns have been raised regarding the role of Prescribed Bodies Corporate (PBCs) and the National Native Title Tribunal (NNTT) in Victoria, particularly in cases where objections are blocked or unresolved. It is essential that the NNTT fulfills its responsibility to Legislative reforms must establish clear guidelines prohibiting clauses that inhibit native title holders from exercising their rights, ensuring that ILUAs uphold the principles of free, prior, and informed consent (FPIC) and do not erode Indigenous sovereignty. Strengthening oversight mechanisms will ensure that ILUAs serve their intended purpose facilitating fair and equitable

Additionally, the requirement to provide evidence of specific sites of particular significance presents a cultural dilemma. Many sacred sites are culturally impermissible to disclose, meaning native title holders cannot provide detailed reports or share sensitive information with proponents or the Tribunal. Furthermore, some sites are remote and difficult to access, making it challenging to gather the necessary documentation.

The failure to act on objections undermines the integrity of the native title system and the principles of self-determination. We call on the relevant authorities to review their processes and take immediate steps to address these concerns. A more accountable, accessible, and culturally responsive approach is needed to ensure that native title holders can effectively engage in the system designed to protect their interests.

The rejection of mining licenses in Victoria, coupled with the absence of a formal statement from the National Native Title Tribunal (NNTT), highlights a critical gap in communication and governance. Native title holders and stakeholders deserve clear and timely explanations regarding decisions that impact their rights and interests. The future acts regime is designed to ensure that native title holders are properly consulted and that their objections are considered.

However, the failure to provide a statement addressing these concerns undermines confidence in the system. We urge the NNTT to fulfill its responsibility by issuing a transparent and detailed statement outlining the reasons behind the rejection of mining licenses and the steps being taken to address native title concerns. A commitment to accountability, fairness, and procedural integrity is essential to maintaining trust in the native title framework.

The National Native Title Tribunal (NNTT) serves as the primary arbitrator under the Native Title Act 1993 (Cth); however, repeated concerns have been raised about delays in its processes, which hinder fair and timely outcomes for native title holders. Delays in resolving objections to the expedited procedure and mining licenses leave native title holders without a clear path forward, potentially impacting their land rights and economic opportunities.

A shift towards independent judicial arbitration, such as appointing a Federal Court judge, would:

- Reduce delays by ensuring cases are addressed with judicial efficiency.
- Strengthen impartiality, ensuring decisions are made free from institutional biases.
- Enhance procedural fairness, bringing native title disputes into a well-established legal framework.

We urge the relevant authorities to consider this reform to restore trust in the native title system and ensure that disputes are handled with the seriousness and urgency they deserve.

- Recognize the cultural sensitivities surrounding sacred sites and allow alternative forms of evidence.
- Provide additional support to native title holders facing resourcing constraints.
- Implement procedural reforms that prevent objections from being dismissed due to lack of formal submissions.

A more equitable and accessible approach is essential to uphold the rights of native title holders and ensure that objections to the expedited procedure are assessed fairly and respectfully.

Data how the future acts regime is operating

The effectiveness of the future acts regime under the Native Title Act 1993 (Cth.) is significantly hindered by the lack of comprehensive and centralized data collection. Without accurate and accessible data, it is difficult to assess how the regime is operating, identify systemic issues, and implement necessary reforms.

The responsibility to ensure transparency and accountability in the future acts process lies with the

government, which must establish consistent, standardized data collection mechanisms across federal, state, and territory jurisdictions.

A fragmented approach to data management disproportionately affects native title holders, limiting their ability to engage in negotiations and advocate for their rights. To address this issue, the government must implement a centralised, publicly accessible database that tracks future acts, their impacts on native title, and compliance with procedural requirements. Strengthening data collection and transparency is essential to ensuring that the future acts regime operates fairly, efficiently, and in alignment with Indigenous rights and interests.

New and emerging industries

The future acts regime under the Native Title Act 1993 (Cth.) must evolve to accommodate new and emerging industries while ensuring that native title holders retain meaningful rights and protections.

The current categories of future acts were designed for traditional land use activities, such as mining and infrastructure development, but may not adequately address industries such as renewable energy, critical minerals extraction, and emerging technologies. Failure to update the future acts framework risks creating legal uncertainty, limiting native title holders' ability to negotiate, and allowing industries to bypass proper consultation processes.

To prevent this, legislative reforms must ensure that new industry developments are subject to robust native title protections, including free, prior, and informed consent (FPIC) and equitable negotiation rights. A future acts regime that is adaptable, transparent, and fair will ensure that native title holders are not disadvantaged by outdated legal structures.

Additionally, the Australian Law Reform Commission (ALRC) has identified the suitability of the future acts regime for new industries as a key issue in its Review of the Future Acts Regime and ensuring that legislative frameworks remain responsive to industry changes is essential to protecting native title rights while fostering sustainable development.

Resourcing and capacity are significant barriers

The future acts regime under the Native Title Act 1993 (Cth.) is intended to provide a fair and equitable framework for negotiations involving native title holders. However, significant disparities in resources available to parties engaging in the regime create systemic barriers to meaningful participation. Native title holders, as well as smaller or non-commercial proponents, often lack the financial and technical capacity to engage effectively in negotiations, leading to power imbalances that favor well-resourced entities.

The Prescribed Body Corporate (PBC) Basic Support funding, administered by the National Indigenous Australians Agency (NIAA), is intended to assist PBCs in meeting their corporate and operational obligations. However, this funding is insufficient to support the complex legal, administrative, and negotiation processes required under the future acts regime.

The responsibility to ensure adequate resources lies with the government, which must provide consistent, sustainable funding to enable native title holders to exercise their rights effectively. Without proper resourcing, the future acts regime risks reinforcing structural inequalities rather than facilitating fair and informed negotiations.

The future acts regime under the Native Title Act 1993 (Cth.) is designed to ensure that native title

holders have a fair and meaningful opportunity to engage in negotiations regarding land use decisions that affect their rights and interests.

While some proponents report that the process is time-consuming, expensive, and complex, the responsibility to uphold legal requirements must remain with those seeking to undertake future acts. The expedited procedure exists to streamline certain processes, but it must not be used to bypass free, prior, and informed consent (FPIC) or diminish native title holders' rights.

Proponents must ensure compliance with all legal and procedural safeguards, including proper consultation and engagement with native title holders. The burden of navigating the future acts regime should not fall disproportionately on native title holders, but rather on those seeking to benefit from land use activities. Strengthening accountability measures for proponents will ensure that the future acts regime operates fairly, efficiently, and in alignment with Indigenous rights and interests.

The complexity and demands of the future acts regime under the Native Title Act 1993 (Cth.) place significant strain on First Nations people engaging in native title processes, as well as legal professionals and advisors working within the sector. The high turnover of professionals, coupled with the loss of expertise, directly affects the quality of legal advice and assistance available to native title holders, limiting their ability to effectively engage in negotiations and protect their rights.

The government has a responsibility to ensure that adequate resources, funding, and support mechanisms are in place to mitigate the effects of burnout and fatigue. This includes capacity-building initiatives, long-term funding for legal assistance, and streamlined processes that reduce administrative burdens on native title holders and their representatives. Without these measures, the future acts regime risks becoming inaccessible and ineffective, disproportionately disadvantaging native title holders.

The future acts regime under the Native Title Act 1993 (Cth.) is intended to provide a fair and equitable framework for negotiations involving native title holders. However, significant disparities in bargaining power between native title parties and proponents create systemic barriers to achieving just outcomes.

This asymmetry is driven by several factors, including unequal access to resources and information, the statistical likelihood that the National Native Title Tribunal (NNTT) will approve a future act if negotiations fail, and the availability of fallback alternatives such as compulsory acquisition. Additionally, native title holders often face pressure to accept agreements that include profit-sharing conditions, despite the NNTT lacking the authority to impose such conditions in its determinations.

The inclusion of restrictive clauses in Indigenous Land Use Agreements (ILUAs), such as gag clauses, confidentiality clauses, entire agreement clauses, and provisions that limit native title holders from exercising their rights under Aboriginal and Torres Strait Islander cultural heritage laws, undermines the integrity of the agreement-making process.

These clauses create barriers to transparency, accountability, and the ability of native title holders to advocate for their cultural heritage and land rights. The government has a responsibility to ensure that ILUAs do not contain provisions that unfairly restrict native title holders from engaging in lawful processes or protecting their interests.

To address these structural inequalities, legislative reforms must ensure that native title holders have access to adequate resources, legal expertise, and negotiation support. Furthermore, the future acts regime must incorporate stronger procedural safeguards to prevent proponents from exploiting power imbalances and ensure that native title holders can engage in negotiations on equal footing. Without these changes, the future acts regime risks reinforcing economic and legal disparities rather than facilitating fair and informed agreements.

The future acts regime under the Native Title Act 1993 (Cth.) lacks a formal requirement for proponents to revisit the terms of an agreement, even when the impacts of a future act on native title rights and interests differ significantly from what was anticipated at the time compensation was negotiated. This absence of accountability creates a structural imbalance, allowing proponents to benefit from agreements without ensuring that native title holders receive fair and just compensation for unforeseen consequences.

The government has a responsibility to implement mandatory review mechanisms that require proponents to reassess agreements at key intervals, ensuring that compensation remains adequate and reflective of actual impacts. Without such safeguards, native title holders risk being locked into agreements that fail to address evolving circumstances, diminishing their ability to protect their land and cultural heritage. Strengthening oversight and accountability measures will ensure that agreements remain fair, transparent, and responsive to the realities faced by native title holders.

Other issues

The future acts regime, as established under the Native Title Act 1993 (Cth), plays a crucial role in regulating activities that impact native title rights and interests. However, the complexity of the regime presents significant challenges for both native title holders and legal professionals attempting to navigate its provisions.

A key concern is the lack of centralised records of future acts, which forces native title parties to independently track their rights, including procedural rights and compensation claims. This fragmented approach creates unnecessary burdens and risks overlooking critical entitlements. Additionally, the absence of consistent oversight mechanisms across state and territory government departments leads to unequal experiences for native title holders, depending on which department they engage with.

The lack of transparent data on future acts further complicates efforts to assess the regime's effectiveness. Without clear records and oversight, it is difficult to determine the full scale of future acts activity and ensure compliance with native title protections. To address these concerns, we call for:

- The creation of a centralised, publicly accessible database of future acts to improve transparency and accountability.
- Standardised oversight mechanisms across all state and territory government departments to ensure consistency in applying the future acts regime.
- Simplification of legal processes to make the regime more accessible to native title holders and their representatives.

A more transparent, efficient, and equitable future acts regime is essential to uphold the rights of

native title holders and ensure fair engagement with the system.

Prescribed Bodies Corporate (PBCs) play a vital role in representing the interests of native title holders. However, concerns have been raised regarding settlement agreements that may restrict a PBC's ability to act on behalf of traditional owners.

If a PBC is bound by a settlement agreement that prevents it from advocating for native title holders, this raises serious questions about fair representation, procedural fairness, and the ability of to exercise their traditional rights. Agreements should not create barriers that limit a PBC's ability to fulfill its core function of protecting and advancing native title interests.

To address this issue, we call for:

- Greater transparency in settlement agreements to ensure native title holders fully understand their implications.
- Independent oversight to assess whether agreements unfairly restrict PBCs from acting in the best interests of traditional owners.
- Legal review mechanisms to allow native title holders to challenge provisions that may limit their rights.

A fair and equitable native title system must ensure that PBCs can act freely and effectively for the communities they represent. Any agreement that compromises advocacy and representation should be subject to review and reform.

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