

Inquiry into the future acts regime under the Native Title Act 1993 (Cth)

By Clare Sayers and Lani Slockee

What is the future acts regime?

The future acts regime is a legislative process under the *Native Title Act 1993 (Cth)* (**Native Title Act**) which must be complied with when non-native title holders wish to deal with land subject to native title. Such dealings (termed 'future acts') are acts which affect native title and may include the grant of permits or tenements, changing the tenure of a parcel of land, building infrastructure, and other dealings with land. If a future act is done without complying with the future acts regime, it will be invalid to the extent it affects native title.

Under the future acts regime, native title holders and registered native title claimants may have varying procedural rights, including: the right to negotiate; the right to object; and the right to be notified.

Why is the inquiry happening?

A review of the future acts regime is one of the eight recommendations listed in the 2021 report *A Way Forward*, the final report of the inquiry into the destruction of sacred rock shelters at Juukan Gorge. Specifically, recommendation 4 of the report stated:

The Committee recommends that the Australian Government review the *Native Title Act 1993* with the aim of addressing inequalities in the negotiating position of Aboriginal and Torres Strait Islander peoples in the context of the future acts regime.

The Attorney-General announced at AIATSIS's 2024 Summit that the inquiry will be undertaken by the Australian Law Reform Commission (**ALRC**). The purpose of the inquiry is to investigate how the regime works and determine where improvements can be made to ensure that the regime operates effectively and fairly.

The last review of the *Native Title Act* occurred in 2015, resulting in the *Connection to Country: Review of the Native Title Act 1993 (Cth)* report. That review focused primarily on the native title claims process and did not consider the future acts regime.

Terms of Reference for the inquiry

The ALRC has been asked to consider:

- the intention of the *Native Title Act*, as stated in its preamble, to be a special measure for the advancement of First Nations peoples, and to ensure native title holders are able to fully enjoy their rights and interests;
- the current operation of the future acts regime, including Indigenous land use agreements (ILUAs), and related parts of the *Native Title Act*, with the aim of rectifying any inefficacy, inequality or unfairness;
- options for efficiencies in the future acts regime to reduce the time and cost of compliance for all parties;
- the rights and obligations recognised in the international instruments to which Australia is a party or which it has pledged to support, including the United Nations Declaration on the Rights of Indigenous Peoples;
- options within laws and legal frameworks to support native title groups to effectively engage with the future acts regime and to support consensus within groups in relation to proposed future acts;
- options to support native title groups, project proponents and governments to share in the benefits of development on native title land, including opportunities for native title groups to lead or co-lead development, and for ensuring native title groups receive commensurate and timely compensation for the diminution of native title rights and interests caused by future acts;
- options for how the future acts regime can support fair negotiations and encourage proponents and native title groups to work collaboratively in relation to future acts;
- the different levels of procedural rights of native title groups in relation to different types of future acts and whether these are appropriately aligned with the impacts on native title rights and interests;

- whether the Native Title Act appropriately provides for new and emerging industries engaging in future acts;
- the National Native Title Tribunal's role in relation to future acts;
- how the rights in the future acts regime compare with other land rights regimes, such as the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), and any relevant international approaches; and
- options to strengthen data collection and appropriate data transparency to support the operation of the future acts regime.

What is the timeline for the inquiry?

- In **November 2024**, the ALRC published an issues paper including more information about the inquiry.
- Submissions on the issues paper are now open until **21 February 2025**.
- In early **2025**, the ALRC will publish a consultation paper which will explain some of the ALRC's ideas for reform and call for formal submissions.
- After the consultation paper is published, the ALRC will then call for submissions on that paper
- By **8 December 2025**, the ALRC must provide its final report for the Attorney-General.

How to get involved

If you are interested in contributing to the inquiry, you can do so by:

- attending consultations and meetings;
- making a formal submission; and
- contacting the ALRC at any time during the review.

Contact details for the ALRC

Email: nativetitle@alrc.gov.au

Web: www.alrc.gov.au/inquiry/review-of-the-future-acts-regime/

Further information is available in the ALRC's Issues Paper: <https://www.alrc.gov.au/publication/future-acts-issues-paper-2024/>



Road to Babinda Boulders, Wanyurr Majay Country, Queensland



Frillneck lizard in Gimuy (Cairns), Gimuy-Walubarra Yidinji Country, Queensland