National Farmers Federation

Australian Law Reform Commission: Review of the Future Acts Regime

July 2025

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade, and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

NFF Member Organisations

23 July 2025

Hon Justice Mordecai Bromberg
Australian Law Reform Commission
Australian Government
PO Box 209
Flinders Lane VIC 8009
Australia

Via Email: nativetitle@alrc.gov.au

RE: Australian Law Reform Commission: Review of the Future Acts Regime

Dear President,

Executive Summary

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Australian Law Reform Commission (ALRC) regarding its Review of the Future Acts Regime under the *Native Title Act 1993 (Cth)* (NTA). This submission complements our initial correspondence to the ALRC dated 13/03/2025 and addresses several of the 18 proposals and 23 consultation questions outlined in the Discussion Paper. This is at Attachment 1 and should be read in conjunction with this submission.

Native Title remains a significant policy issue for the Australian agriculture sector. The agriculture sector frequently interacts with the NTA and Future Acts Regime particularly where non-exclusive Native Title rights exist with other land-use interests such as pastoral leases and area-based carbon projects. These interactions are especially prominent in Western Australia, Northern Territory, Queensland, and New South Wales as significant areas of land are subject to Native Title determinations or claims. Given the significance of these interactions and their implications for land-use and property rights, the NFF has been actively involved in Native Title law reform. This includes engagement during the development of initial legislation in 1993, the 1998 amendments following the *Wik Peoples v Queensland* decision, and subsequent Government reviews, consultations, and Senate Inquiries.

As a longstanding contributor and key stakeholder in Native Title law reform, NFF recognises that the current Future Acts Regime is failing to deliver timely, efficient, and equitable outcomes for agricultural landholders. We acknowledge the ALRC's efforts to advance a broad set of reform proposals to facilitate public discussion and remain committed to ongoing engagement to ensure reforms deliver practical, efficient, and balanced outcomes for the farm sector. We understand that further consultation opportunities will be made available ahead of the Final Report deadline in December.

At a high-level, NFF does not support the proposals outlined in the Discussion Paper. Reforms must be guided by the principles of efficiency, fairness, and supporting regional economic resilience. In our view, the proposals outlined lack balance, introduce additional complexity, fail to recognise and integrate with existing legislative frameworks governing Business-As-Usual (BAU) agricultural activity, and fall short in improving efficiencies in current agreement-making processes.

We strongly oppose proposals that impose mandatory financial obligations on non-Indigenous stakeholders to fund engagement and compensation, as well as the proposed introduction of a 'Right to Object' within the proposed 'Right to Negotiate' pathway. These ideas are unfair, place an unreasonable financial and administrative burden on proponents, and risk creating structural imbalances within the legislative framework. There are also unresolved questions about how the proposed impact-based approach to assessing Future Acts will protect rather than erode statutory rights attached to non-exclusive pastoral lease and the legal rights and certainty of freehold land tenure. This has generated significant concern amongst our members.

Imperative for Reform

The Future Acts Regime has remained largely static for several decades of operation resulting in entrenched inefficiencies and procedural complexities that hinder timely and effective negotiations. Since the commencement of the NTA in 1994, there have been 530 positive Native Title determinations, 285 Prescribed Body Corporates (PBCs) established, and 1,520 Indigenous Land Use Agreements (ILUAs) registered with the National Native Title Tribunal (NNTT). With approximately 77% of Australia now subject to a Native Title determination or an ongoing claim for recognition, it is both timely and appropriate that this Review is undertaken to reform the legislative framework and deliver better outcomes for all stakeholders.

Navigating the requirements of the Regime is a complex, challenging, and sensitive issue for Governments, Indigenous peoples, and proponents. The process to engage is often underpinned by significant procedural, legal, and administrative requirements that vary across jurisdictions and land tenure types. For the farm sector, these complexities regularly translate into practical barriers when negotiating ILUAs. Key challenges include stakeholder identification (a task complicated by information asymmetry), limited support mechanisms, and an expectation to fund Indigenous engagement (a view influenced by the actions of greater resourced sectors [i.e., mining and resources] when negotiating ancillary agreements). These challenges translate into unnecessary delays, generating significant cost and uncertainty for agricultural proponents seeking to undertake a Future Act.

In summary, NFF's core concerns with the current operation of the Future Acts Regime can be categorised into the following issue areas. Reforms must be aligned along these measures:

1. *Information asymmetry in the context of engagement and agreement-making.*
2. *Inefficiencies in current Future Acts processes.*
3. *Challenges in establishing ILUAs and the need for an alternative.*
4. *Integrating climate and other infrastructure projects with ILUAs.*
5. *Structural inequities in stakeholder engagement.*

Indigenous Land-Use Agreements

Information Asymmetry

Establishing ILUAs remains a complex and resource-intensive process for agricultural proponents and Indigenous stakeholders. It is common for ILUAs to be finalised, assessed, and registered by the NNTT after several years (i.e., upward of five-years) of negotiations.

In this context, ILUAs are an inefficient mechanism for facilitating agreement-making and are in urgent need of reform.

One of the primary challenges in establishing an ILUA involves the difficulty and uncertainty in identifying the correct Native Title party or parties with whom to negotiate with. This issue is particularly acute in areas subject to overlapping Native Title claims (pre-determination) and/or in regions where multiple PBCs operate concurrently over the same parcel of land. Even where determinations exist, obtaining accurate and timely information about the appropriate Native Title party and engagement representatives to commence negotiations with remains a significant challenge. While public registers are available, they are affected by data quality issues. Information may be outdated, fragmented, or lack sufficient detail for proponents to engage meaningfully and confidently. This reality is reflected in the ALRC's proposals to introduce stricter quality assurance measures for ILUAs (whether that be through auditing or other mechanisms to remove outdated information). This information asymmetry is compounded by widespread resourcing constraints which undermine the capacity for all parties to negotiate on an equal footing.

These challenges are not limited to non-Indigenous stakeholders. There is apparent dissatisfaction within the Indigenous community regarding confidence in the ILUA system itself. Traditional Owners are of the view that ILUAs are too technical, inflexible, and impose structures that fail to reflect Indigenous governance and/or decision-making processes. This concern can be attributed to the way Registered PBCs are structured from a governance and voting perspective (i.e., majority vote, consensus, or conflicting Board representative interests). Despite being one of the few formal tools available to authorise Future Acts (particularly for the agriculture sector), ILUAs can reinforce procedural inequalities where governance is weak or unrepresentative and impose burdens that neither party is equipped to manage without external legal and/or financial support.

In this context, the ALRC's proposal to develop Native Title Management Plans (NTMPs) offers a more proactive and flexible alternative to agreement-making. NTMPs have the potential to support early engagement and long-term planning, particularly where parties seek clarity around permissible activities and consent processes. However, NTMPs are not mandatory, remain conceptual, and unlike ILUAs do not create binding legal authorisations or rights enforceable through the NNTT. Subsequently, there Is a risk that NTMPs will become an optional planning tool with uncertain legal status rather than a genuine pathway to simplify or substitute formal agreement-making through the traditional ILUA process. NFF sees this as a key area for further development and investigation.

Inequities in Stakeholder Engagement and Government Support Services

NFF has observed significant disparities in the level of support provided to different stakeholders involved in Future Act processes. While Native Title parties receive Government-funded assistance to participate in negotiations, non-Indigenous proponents often bear substantial out-of-pocket costs. As previously discussed, agricultural proponents regularly experience an implicit expectation to fund Indigenous engagement throughout the negotiation period. For instance, landholders routinely report instances where an upfront payment of $5,000 is implicitly or explicitly requested simply to commence initial discussions with a Native Title party. These examples are not isolated to

a specific jurisdiction nor individual experience; they reflect a pattern of behaviour experienced by the sector nationwide.

Although the Discussion Paper recognises that limited resources and capacity amongst stakeholders (including agricultural proponents) can hinder effective engagement, the Paper places exclusive focus on addressing Indigenous resourcing needs with minimal regard for the challenges faced by non-Indigenous stakeholders. Several proposals explore options such as creating a perpetual engagement fund, bolstering PBC access to funding via the *National Indigenous Australians Agency,* and a better-resourced NNTT to support engagement. Although such measures are supported in-principle, they must not come at the expense of non-Indigenous stakeholders. Doing so not only ignores the reality that resourcing pressures cut across all stakeholder groups but also risks generating outcomes that are inequitable in-effect.

Without sufficient support, proponents cannot meaningfully participate in the system and this jeopardises projects that deliver economic opportunity, infrastructure investment, and employment into regional and remote Australia. These projects not only underpin agricultural productivity but also create opportunities for Indigenous communities to share in long-term socio-economic benefits. Strengthening the global competitiveness of Australian agriculture is intrinsically linked to unlocking Indigenous development outcomes. A balanced and equitable resourcing approach is therefore essential to ensuring that all parties can engage on equal footing and benefit from shared prosperity.

The NFF has been a longstanding advocate for fair resourcing outcomes, including:

- *$1 million (to be drawn down on a needs basis) to assist primary producers via their representatives (State Farm Organisations and their expert legal representatives) to resolve Native Title issues, most recently outlined in the NFF's 2023–24 Pre-Budget Submission (Attachment 2).*

- *Seeking that the now abolished Native Title Respondents Scheme administered under the Department of Attorney-General which provided funding for parties (agricultural proponents) responding to Native Title claims (through a clear and reasonable framework) is continued.*

NFF have written to the Attorney-General on several occasions on the above resourcing requests. A copy of NFF correspondence to The Hon Mark Dreyfus is at Attachment 3.

Enforcing the ILUA Register

Regular Auditing

The proposal to implement periodic audits to remove outdated ILUAs is supported as this will ensure information in the public record is current, enabling more effective stakeholder outreach and engagement where required. Responsibility for initiating this process should primarily rest with the agreement parties who are required to notify the NNTT of any changes. This approach recognises the limited resourcing capacity of the NNTT and the clearly defined scope of its statutory functions.

Remove Expired ILUAs From Public Registers

NFF supports the proposal to remove expired or terminated ILUAs from the public register as a good public transparency measure. Removing inactive agreements will assist in addressing information asymmetries and give proponents greater confidence that the data relied upon in initiating agreement-making processes is current and reliable.

Agreement Making

Expanded Use of Standing Instructions

Proposal 1 allows Native Title holders to provide prior approval for certain low-impact activities (i.e., fencing, road maintenance, or pest control) through expanded PBC standing instructions. This is intended to empower PBCs to enter into lower-impact agreements with proponents on behalf of a Native Title party without the need for case-by-case authorisation. The NFF supports this approach as a practical efficiency measure as it has the potential to reduce agreement-making timeframes and administrative burdens. Delays in agreement-making often arise from the practical challenges Native Title parties face in engaging consistently and within short timeframes. Providing PBCs with the authority to make an agreement through expanded standing instructions ensures integrity in the process while enabling greater flexibility.

Proposed Conduct and Content Standards

Negotiation Conduct Standards

The introduction of minimum conduct standards must be carefully designed to avoid encouraging a 'race to the bottom' in negotiation dynamics, where stakeholders prioritise procedural compliance over meaningful engagement. We note that proposals to introduce obligations to negotiate in good faith and to act free from coercion are already widely adopted in-practice by the farm sector.

Good Faith

The NFF does not support embedding a prescriptive definition of 'good faith' within the NTA. A prescriptive approach is dangerous and risks undermining case law precedent. We do, however, support a framework of what 'good faith' should like in agreement-making including for ILUAs. This must include transparent timeframes whereby Native Title parties are required to respond within a reasonable period following notification during the negotiation and consultation process. Importantly, obligations to act in 'good faith' must apply equally to all parties, with expectations set in a fair and proportionate manner. On this point, we bring your attention to the overarching Objectives that guide NNTT operation outlined in Section 109 of the NTA. Specifically:

> *"Tribunal's Way of Operating*
> *Objectives*
> ***(1)*** *The Tribunal must pursue the objective of carrying out its functions in a fair, just, economical, informal, and prompt way".*

Content Standards (Cost Sharing)

The agriculture sector needs to be able to participate with equity in any legal process that relates to the resolution of Native Title. The ability to resolve Native Title disputes quickly and effectively will provide certainty and predictability to both Indigenous claimants and farm businesses. NFF does not support any requirement for non-Indigenous proponents to fund the engagement costs of a Native Title party during negotiations. While we understand that the underlying intent is to introduce greater structure into what is often a complex and uncertain process, this approach is unfair, inequitable, and risks entrenching structural imbalances within the legislative framework. It also conflicts with broader stakeholder calls to level the playing field in agreement-making processes, and it is inconsistent with the ALRC's stated objective of enhancing fairness and Section 109 of the NTA. Additionally, it also raises questions about how 'engagement' is defined, what constitutes reasonable duration, and what the appropriate forum should be.

Improving Transparency

NFF supports greater transparency in agreement-making. We support the proposal that key agreement terms are to be made public provided that culturally and commercially sensitive information is protected. There is an argument that Future Acts on Native Title are matters of public interest and should therefore be subject to a reasonable level of public transparency and visibility.

Currently, there is no formal manner whereby project proponents can benchmark, compare, or evaluate existing agreements. Agreements made under the current 'Right to Negotiate' process lack transparency, as the commercial and operational terms are typically negotiated as ancillary agreements and kept private between parties. This lack of transparency enables poor practices to emerge and distorts expectations across sectors. For example, mining companies often negotiate ancillary agreements confidentially with Indigenous stakeholders, leaving proponents outside of the resource sector with no visibility over what constitutes reasonable or accepted terms. This can expose proponents to inflated or unrealistic expectations regarding engagement costs, particularly during preliminary negotiations.

Increased transparency would:

- *Improve the negotiation process;*
- *Encourage more equitable agreements;*
- *Improve accountability;*
- *Increase coordination and consistency between coinciding legislation;*
- *Allow stakeholders to identify and standardise common terms;*
- *Reduce time spent re-negotiating the same matters; and*
- *Protect against bad-faith actors taking advantage of opaque systems.*

In addition, NFF reiterates that agreement-making processes must involve consultation with all stakeholder parties. Our members are aware of several examples where State Governments have negotiated ILUAs with Indigenous groups without notification, visibility, or involvement of non-Indigenous stakeholders and proponents. This practice is deeply concerning and undermines the credibility and trust of the ILUA process. Such arrangements must not be allowed to become a fait accompli.

Mandatory Dispute Resolution Clause

NFF supported amending the NTA to require that new agreements include a mandatory dispute resolution clause, committing parties to use the NNTT's services (including mediation and binding arbitration) to address agreement-related disputes. This measure will streamline dispute resolution processes and promote greater consistency as conflicts will be addressed through a dedicated expert forum. More importantly, it would reduce reliance on formal litigation, which is often time-consuming, costly, and burdensome for all parties.

Additionally, it is our view that parties should not be compelled to bear costs beyond their own direct participation. The process must not become a de-facto mechanism for wealth redistribution to settle grievances unrelated to the terms of an agreement. There is also a strong public interest case for using public funds to facilitate dispute resolution services. As a fundamental principle, any increase in NNTT functions and responsibility should be matched with commensurate public funding support for NNTT and a procedurally fair commensurate support for non-indigenous stakeholders.

Compensation and Other Payments

NFF does not support amending the NTA to mandate that specific Future Acts require a compulsory 'Future Act payment' to be made to the relevant Native Title party prior to, or at the time of, the undertaking of an Act. All parties must be equally supported to engage in agreement-making processes. The Discussion Paper outlines four potential scenarios where such a requirement could apply:

a) *As agreed between the native title party and relevant government party or proponent;*
b) *In accordance with a determination of the National Native Title Tribunal where a matter is before the Tribunal;*
c) *In accordance with an amount or formula prescribed by regulations made under the Native Title Act 1993 (Cth); or*
d) *In accordance with an alternative method.*

Any form of compensation associated with a Future Act must be determined through a negotiated agreement between parties, not mandated through legislation. Introducing a fixed or compulsory payment requirement is unfair and inequitable, particularly for agricultural proponents who lack sufficient resources and capabilities.

NFF opposes the use of fixed thresholds or formulas as outlined in options (c) and (d) respectively. These approaches raise serious concerns and legitimate questions about what constitutes a 'just' amount, and how payments are to be applied consistently across a range of Future Acts. These concerns are further compounded by the fact that no compensation claim under the NTA been successfully determined, leaving a significant gap in legal precedent and guidance.

Proposed Structural Reform Approach

As outlined in Figure 1, the ALRC has proposed a tiered approach to how a reformed Future Acts Regime could operate in-practice.

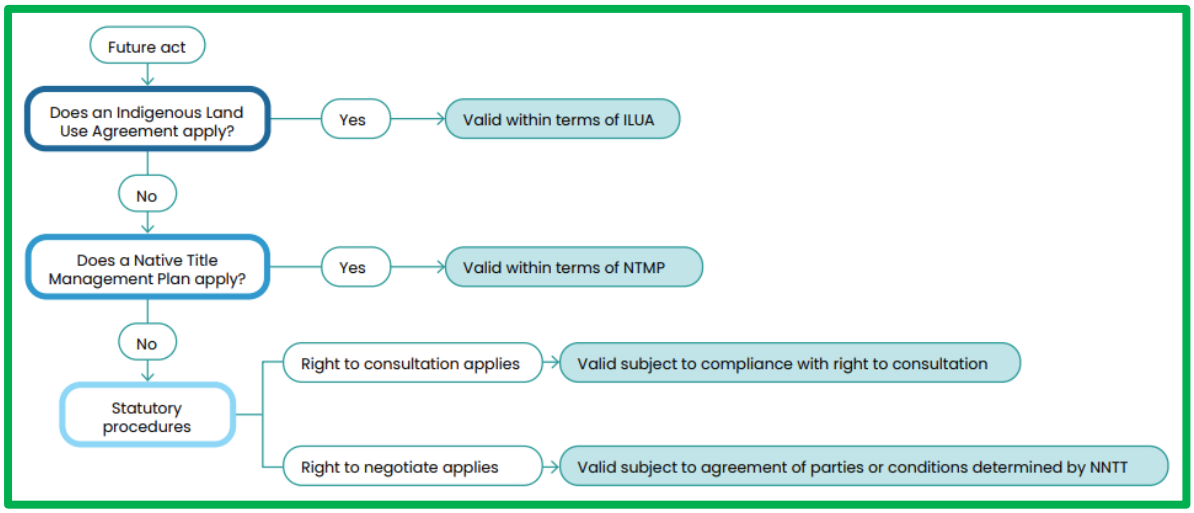

Figure 1: ALRC pathways to validity.

Native Title Management Plans

NFF supports the proposed introduction of NTMPs as a voluntary mechanism to improve transparency and efficiency within the Future Acts Regime. NTMPs offer an opportunity for PBCs to proactively articulate the interests and aspirations of a Native Title party rather than reactively responding to Future Act processes on a case-by-case basis. NTMPs will effectively operate as a development risk map for proponents as they will identify areas where activities may be permitted, conditional, or restricted. This approach is supported by the farm sector as it will reduce uncertainty and facilitate stronger relationships between stakeholders.

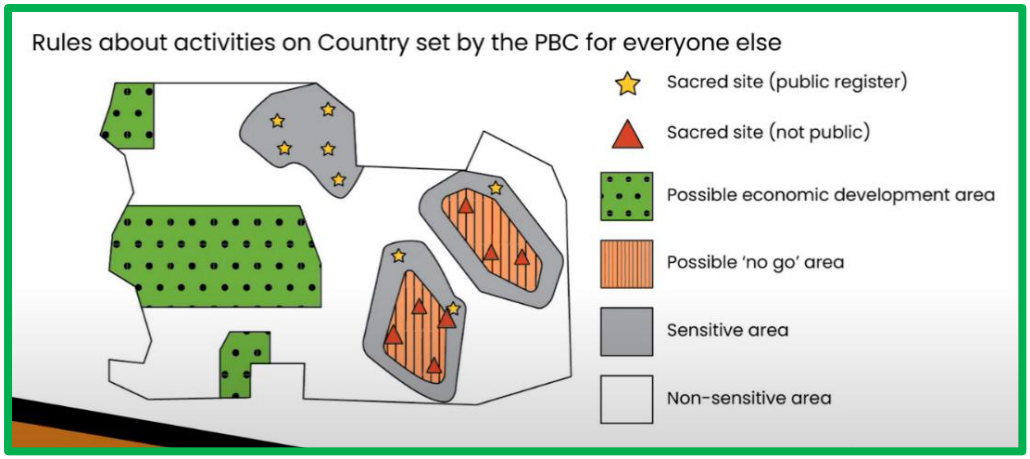

Figure 2: Possible NNTT design elements.

The ALRC has described NTMPs as providing a one-stop-shop for agreement-making. The extent to which this vision is realised will depend on several factors, including:

- *The level of interest and capacity of PBCs to willingly participate;*
- *The nature and detail of NTMPs developed by PBCs, including the extent and quality of cultural mapping;*
- *Funding costs; and*
- *The degree of transparency provided to prospective proponents in the design and development process (i.e., cultural sites marked as public or confidential).*

While the NFF recognises the importance of safeguarding cultural sites, a lack of visibility and disclosure of cultural sites will unintentionally undermine the efficiency and cost-benefits associated with NTMPs. Additionally, questions remain about how NTMPs will interact with non-exclusive land titles in a negotiation process, and how conflicts will be resolved between parties. As established in law, where conflict arises between non-exclusive pastoral lease rights and Native Title, pastoral rights prevail. There is concern however that NTMPs may be utilised as a de-facto planning mechanism by PBCs to restrict or delay development, and that the NNTT will be drawn into prolonged mediation conflicts where legal precedence already provides certainty in outcome (i.e., scenarios that undermine the Wik legislation including its' Principles).

NTMPs will also require significant time and technical input (i.e., cultural mapping) to develop. NFF supports a requirement that cultural mapping activities are undertaken by an independent third-party as part of the NNTT registration process to mitigate bad faith outcomes and build trust within the NTMP framework. While a role for representative bodies and Land Councils has been suggested, there is currently no funding pathway to support their involvement. We also note that the ALRC has already recognised the resourcing limitations of these organisations (Native Title Service Providers) in Paragraph 179 of the Discussion Paper. Confidentiality claims must not become the norm.

To ensure credibility and a willingness to engage from proponents, NTMPs must be developed in collaboration with non-Indigenous land-use interests. NFF recommend that the NNTT registration process require PBCs to consult with pastoral holders (at the individual and collective level) during the development process and that the views of those engaged are considered in accordance with the same consideration principles granted for a Native Title party.

Impact-Based Assessment Approach to Future Acts Processes

NFF acknowledges the ALRC's proposed reforms to the current statutory procedures to assessing Future Acts (Figure 3). The proposed shift from a use-base system to an impact-based approach to Future Acts is a significant adjustment that must not be discounted. **Such a model must recognise and protect the Wik Principles and not erode existing protections for pastoral and other land-uses that exist under case law.**

We support the principle that the level of procedural requirements for Future Acts processes resemble the level of impact on Native Title rights while being sufficiently flexible to apply across all sectors and Future Acts categories.

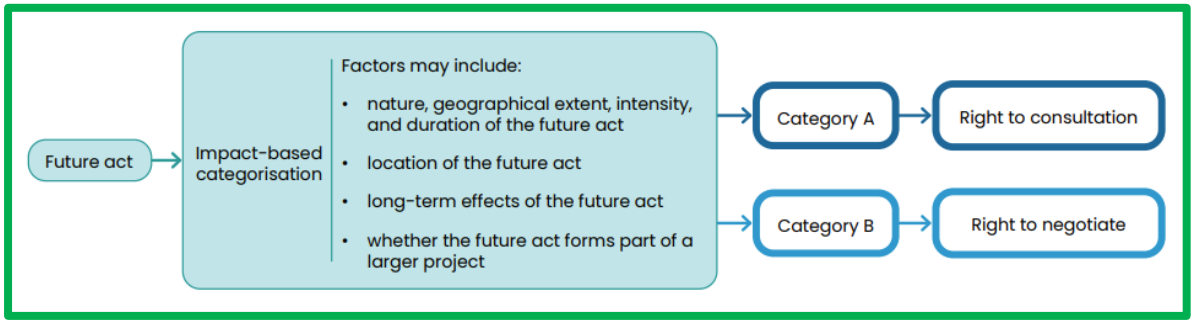

Figure 3: Proposed impact-based model to assessing Future Acts.

Table 1: Impact categorisation as outlined by ALRC. NFF recommendations in red and strike-through text.

Impact	***Factors***	***Statutory Procedure***
Category Zero	*Activities that:* • *Are small-scale;* • *Involve an activity that has a low or no physical impact;* • *Do not affect any sites or areas of cultural heritage sensitivity, or the impact can be wholly avoided or mitigated;* • *Do not substantially impact Native Title rights and interests in the area of the Future Act in any way; or* • *Are covered under a registered NTMP and/or otherwise require impact assessment under legislation or licensing/leasing.*	*'No Need to Consult or Notify' (No Risk, BAU)*
Category A	*Future Acts that:* • ~~*Are small-scale;*~~ • *Cover a discrete and limited geographic area;* • ~~*Involve an activity that has a low or no physical impact;*~~ • ~~*Do not affect any sites or areas of cultural heritage sensitivity, or the impact can be wholly avoided or mitigated;*~~ • *Are of a temporary or short duration;* • *Have no permanent, medium- or long-term physical effects; or* • ~~*Do not substantially impact Native Title rights and interests in the area of the Future Act in any way.*~~	*'Right to Consultation'*
Category B	*Future Acts that are not 'Category A' Future Acts. For example, Future Acts that:* • *Are not small-scale, or cover a discrete and limited geographic area;* • *Involve a land-use activity with some physical impact;* • *Affect a site or area of cultural heritage sensitivity; or* • *Substantially impacts native title rights and interests in the area of the Future Act.*	*'Right to Negotiate'*

Risks of a Bureaucratic Bottleneck

Contrary to its intended purpose of streamlining processes, NFF is concerned that an impact-based model to assessing Future Acts may inadvertently create a bureaucratic bottleneck, one that neither Native Title parties, Land Councils, or proponents have the capacity or resourcing to navigate effectively.

We note the following concerns and recommendations:

- The NNTT is already operating under considerable strain. The capability for a Native Title party to challenge an impacted-based categorisation (Question 14) and/or separate issues under the Category B approach requires sufficient safeguards to avoid misuse, minimise delays for proponents, and ensure the NNTT is not overwhelmed by an influx in disputes that divert attention and resources away from its broader responsibilities.

- Introduce mandatory cost caps and fast-track dispute resolution to prevent misuse of negotiation rights and objections.

- Undertake a three-year formal Review on impacts to agriculture, regional water use, and local employment.

- NFF acknowledges that the proposal to expand notification-only pathways (where there are low impacts) could make some types of renewable energy infrastructure easier to develop, especially if co-located on agricultural land. However, many renewable energy infrastructure projects will likely remain high-impact and require formal negotiation (hence the necessity for clear National Guidelines – this is addressed later in this submission).

Consideration of Views Requirement

The NFF questions how a consideration of views under either impact pathway will be implemented and assessed from a mediation and review perspective. It is our understanding that existing requirements under the current 'Right to Negotiate' process including that parties negotiate in good faith and act with *"honesty and sincerity of intention"* with the aim of reaching agreement will be utilised as guiding principles. This needs to be clarified upfront should ALRC seek industry support.

Appendix A: Limitations, Agricultural Realities, and Security of Land Tenure

The NFF understands that the scenarios outlined under Appendix A represent a hypothetical thought exercise than a considered set of categorisation examples. Nevertheless, it is prudent for NFF to articulate our clear expectations and concerns on the thresholds presented.

Our concerns and recommendations are as summarised:

- As was the subject of previous discussion with ALRC, the 400-hectare clearing of native vegetation threshold fails to recognise and respect BAU agricultural activity

where the average size of cattle station operations spans several hundred thousand hectares. The rationale in Example 7 also fails to recognise and address dual consent and/or provide security in land tenure as it relates to conflicts between non-exclusive pastoral lease rights and Native Title. The Future Acts Regime already intersects with a range of cultural heritage laws, environmental planning legislation, and licensing frameworks in addition to obligations imposed under the NTA and requirements laid forth by Land Councils. Creating an additional overlay (including a 'Right to Negotiate' and 'Object') risks undermining the principles outlined under the Wik and the security of property titles.

- Examples 6 and 9 involve standard infrastructure maintenance operations, yet have been categorised as Category B Acts, meaning they would be subject to the revised 'Right to Negotiate' process. This classification arises due to impacts on Native Title that occur off-site, even where the development itself takes place on freehold land. This is a significant concern for our members. The practical effect to agriculture is that on-farm improvements and infrastructure works essential for regional productivity and socio-economic development will be either delayed or prevented entirely. It reinforces our broader concern that reform must not create barriers to activities deliver long-term shared prosperity for all.

- The ALRC must confirm extinguishment remains absolute for freehold land tenure and remove additional overlays where these interactions arise. This could be achieved by introducing a no-risk impact-based categorisation for Future Acts. The same principle must apply in areas of dual consent (i.e., approvals granted through State and Territory environmental legislation or other approval processes for activities involving land-clearing, and other production activities).

National Guidelines

As outlined in Paragraph 154, *"to assist parties consider the impact of a Future Act, National Guidelines should be developed".* NFF strongly supports the development of Guidelines as this will provide certainty around how impacts are characterised and protect efficiencies in process by outlining clear thresholds as to whether a self-assessed categorisation is open to challenge and subsequent scrutiny. It is also important to recognise that in the absence of an agreed set of Guidelines, the proposed model gives Native Title parties broad discretion to argue that an Act is large-scale or high-impact, leaving the door open to procedural hurdles (i.e., negotiation, objection, resolution, etc.) that undermine the model's intended efficiency improvements. Guidelines must be developed in partnership with industry through a meaningful and iterative consultation process that allows stakeholders to stress-test issues and resolve concerns.

The ALRC must not shy away from this important responsibility, and we strongly urge and expect ALRC develop strong recommendations on what a set of National Guidelines should contain. While we recognise that responsibility will ultimately reside with the Commonwealth, the ALRC is best placed to lead this work given its extensive consultation and understanding of the key priorities and concerns of each economic sector. On this point, the hypothetical thought exercise that is presented as Appendix A should not be used as a serious and/or credible guide to inform such work. As NFF have identified, there are several issues around the high-impact categorisation of pastoral operations (Example 7) and water infrastructure works (Examples 6 and 9) where, with regards to the latter, impacts are subjective and off-site.

NFF also recognise that initial implementation of Guidelines will not come without teething issues and that behavioural adjustments will take time to materialise. This will take considerable time depending on the detail and clarity of the thresholds articulated and developments in case-law. There will be a period where there are inefficiencies in outcome, this needs to be recognised and embraced should an impact-based model be recommended as the preferred reform option. On this point, a transitional period will be necessary to facilitate an adjustment away from the current statutory process and allow procedural inefficiencies to be corrected.

Proposed 'Right to Negotiate' Process

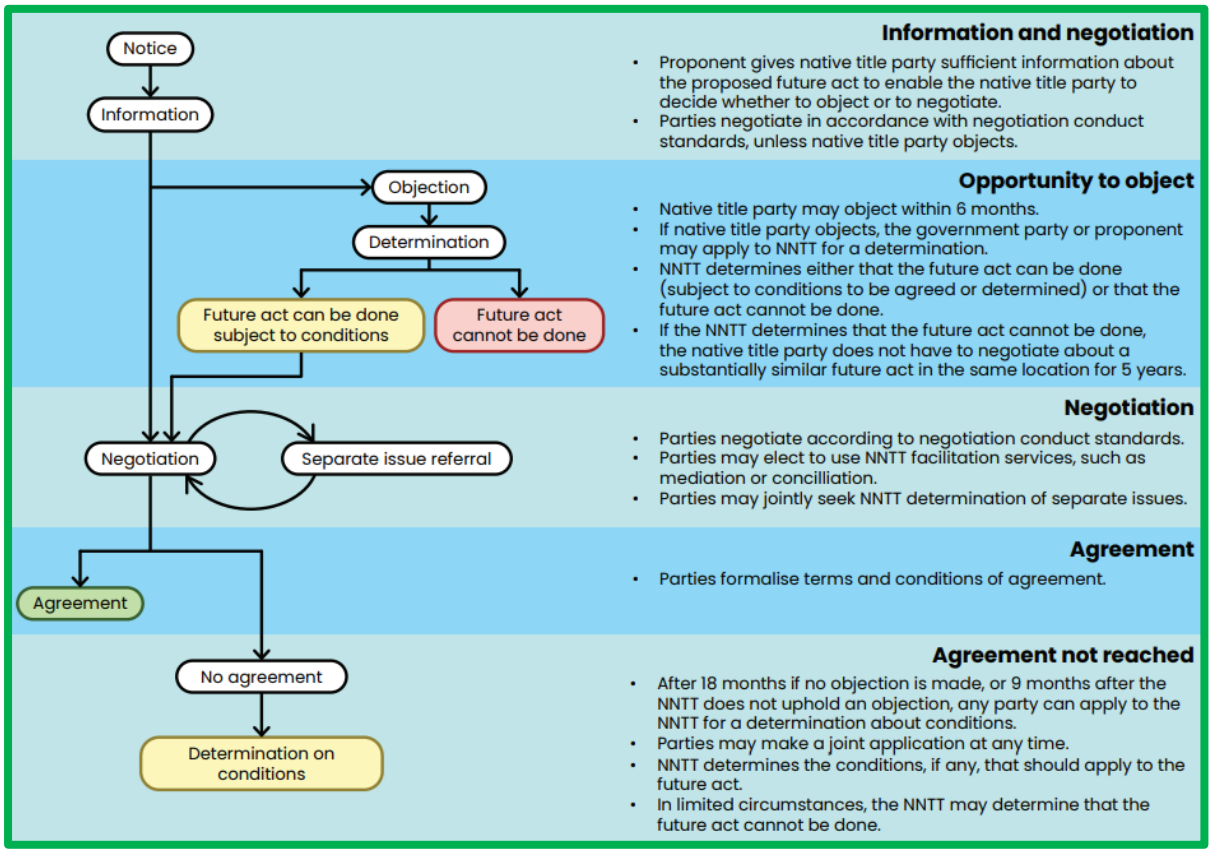

Figure 4: Proposed 'Right to Negotiate' approach and key steps.

NFF do not supported the revised 'Right to Negotiate' process for Category B Future Acts. The ability for a Native Title party (pre-determination) to object to a Future Act at any stage of the negotiation process within a six-month period disproportionately shifts the balance of negotiations further in favour of Indigenous stakeholders without any safeguards for proponents. It is essentially a mid-process 'veto' over development that can only be reversed after a determination by the NNTT or judicial system: processes that take significant time, cost, and legal resources for all parties to resolve. The introduction of this 'Right to Object' is strongly opposed by NFF. We consider it to be a significant step-back on what is already a burdensome process.

Jurisdictional Alignment

It was concerning to hear from ALRC that there have been minimal efforts to align proposed NTA reforms with existing jurisdictional legislation as this falls beyond the scope of the Terms of Reference and would require additional time and resourcing to undertake. As the ALRC is aware, Australia's development framework is already characterised by a complex and often duplicative system of overlapping or dual consent requirements. Any Commonwealth reform must take into consideration these layers and avoid introducing new processes that conflict, duplicate, or introduce uncertainties in existing State and Territory processes. It is our view that this has not been achieved.

Concluding Remarks

The NFF thanks the ALRC for the opportunity to contribute to this Review and for taking the time to engage and consult the views of our members. This submission has outlined a range of concerns from an efficiency, fairness, and regional development perspective. While many proposals show merit, we urge the ALRC to reconsider and strengthen the shortcomings of its Discussion Paper in accordance with our recommendations to ensure reforms reflect and deliver better outcomes for Australian agriculture.

We also encourage the ALRC to adopt a more practical approach to reforming the agreement-making process. Introducing prescriptive standards alone will not resolve the underlying inefficiencies in ILUA establishment. In our view, the focus must shift toward addressing information asymmetries, increasing support and resourcing to assist all parties in negotiations, and reducing administrative burdens for proponents. Additionally, it is important that the ALRC provide clear advice to Government on the development of National Guidelines to inform the proposed impact-based model, drawing on the sector-specific insights gathered through consultation.

We seek further engagement with the ALRC once preliminary recommendations are developed in the lead-up to the December timeframe. Please do not hesitate to contact Warwick Ragg, General Manager, Natural Resource Management, via e-mail: WRagg@nff.org.au at the first instance to progress this discussion.

Yours sincerely,

TROY WILLIAMS
Chief Executive Officer

Attachments List

1. 13/03/2025 NFF Correspondence to the ALRC (RE: 2024 Issues Paper and Recommendation of Scope).
2. NFF 2023-24 Pre-Budget Submission.
3. 14/06/2022 NFF Correspondence to The Hon Mark Dreyfus QC MP, Attorney-General (RE: Continuation of the Native Title Respondents Scheme to Facilitate Timely and Equitably Native Title Litigation Resolution).

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