



## Native Title Newsletter 2024

### Key Considerations for Native Title Holders in Negotiating Land Use Agreements for Renewable Energy Projects

As native title holders, it's vital to be well-informed about how land use changes, particularly for renewable energy projects, can impact your native title rights and interests. One important aspect of this is understanding how section 154(2)(a)(ii) of the *Land Act 1994* (Qld) could affect your native title if the land is currently subject to a pastoral lease.

#### Understanding the Legal Framework

Section 154(2)(a)(ii) of the *Land Act 1994* (Qld) allows for the addition of renewable energy production as an additional purpose under a pastoral lease. This means that the holder of a pastoral lease can apply to the Minister for an amendment to their lease to include a purpose which permits activities such as wind or solar farm operations.

#### Impact on Native Title Rights

Once the additional purpose is granted under the lease, it has immediate implications for native title rights and interests over the land. Importantly, this effect occurs regardless of whether the renewable energy project actually takes place on the land. The change in purpose may cause an impact on native title rights as soon as the additional purpose is approved.

#### Key Points to Consider

- 1. Immediate and Significant Effects:** The granting of an additional purpose for renewable energy production may impact the exercise of native title rights and interests. For example, the right to hunt or conduct ceremonies will be unable to occur at the site of a wind turbine or solar farm for as long as the pastoral lease remains registered and the renewable energy project continues to operate. Even if the renewable energy project does not proceed, the impact on your native title rights remains. Understanding this is crucial when entering into negotiations.
- 2. Timing of the Application:** The timing of the application for the additional purpose can impact your negotiations. It's important to be aware of when the application might occur and to factor this into your discussions regarding compensation and other considerations.
- 3. Compensation for Impacts:** The immediate and significant nature of the additional purpose on native title rights and interests means that appropriate compensation must be negotiated. Ensure that compensation reflects not only the potential impact of the renewable energy use but also the broader and ongoing effects on your native title rights arising from the change to the lease purpose.
- 4. Consultation and Negotiation:** Engage in thorough consultations to understand how the additional purpose might affect your rights. Ensure that you have legal

support to advocate for fair compensation and to ensure that your interests are protected throughout the negotiation process.

## Moving Forward

Being proactive and informed is key to protecting your native title rights. If you are approached about a renewable energy project or if you anticipate changes to the pastoral lease affecting your rights, it's important to understand the implications fully and to negotiate accordingly.

For assistance with navigating these issues or to discuss your specific situation, please reach out to our experienced legal team. We are here to help ensure that your rights are safeguarded and that you receive fair compensation for any impacts on your native title land.

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## Inquiry into the Future Acts Regime

On 4 June 2024, it was announced that the Australian Law Reform Commission (**ALRC**) will undertake a review of future acts regime in the *Native Title Act 1993 (Cth)* (**NTA**). The future acts regime sets out a process for certain acts that are done after 1 January 1994 that affect native title rights and interests. Future acts can include the grant of a mining tenement or the construction of public infrastructure. This inquiry by the ALRC will review the current future acts regime and investigate any inequality, unfairness or weaknesses in its current operation.

The need for a review of the future acts regime was triggered by the Federal Government's response to the Joint Standing Committee on Northern Australia's report on the the destruction of First Nations cultural heritage. Specifically, the *A Way Forward Report* was published as a result of the destruction of Juukan Gorge, a highly significant cultural site for the Puutu Kunti Kurrama and Pinikura People, in the Pilbara region of Western Australia. This report provided recommendations highlighting the need for a reform of the current national cultural heritage protection framework.

### The terms of reference for the Inquiry ask the ALRC to consider:

- the operation of the NTA and the future acts regime for over 30 years;
- the passage of almost a decade since the last review of the NTA ([Connection to Country: Review of the Native Title Act 1993 \(ALRC Report 126\)](#));

- the significance of the NTA, with native title having now been determined to exist in exclusive and non-exclusive form over a substantial proportion of the Australian land mass, with almost 500 claims determined and a more than 100 claims ongoing;
- the deep connections of First Nations Australians to Country that are recognised through a determination of native title, and the considerable processes that native title holders have undergone to achieve this legal recognition;
- the opportunity for the native title system to contribute significantly to social, cultural, environmental and economic outcomes for First Nations people, businesses, organisations and communities;
- the role of the future acts regime as a precursor to economic and other activities on native title land;
- the importance of the future acts regime being appropriately designed for Australia's current and future social and economic development, in a way that respects the rights and interests of native title holders; and
- the Australian Government's agreement in principle with Recommendation 4 of the former Joint Standing Committee on Northern Australia in its report, *A Way Forward*, released in October 2021.

As part of the inquiry by the ALRC, the Commonwealth Attorney-General has directed the ALRC to identify and consider the views of relevant stakeholders within the native title system including native title holders and future act proponents. To enable the ALRC to engage closely with stakeholders located in regional, remote and very remote areas, the Federal Government announced supplementary funding of \$550,000 for this purpose. This forms part of the Federal Government's \$20.8 million 2024-25 Budget allocated to improving the current native title system.

The Inquiry is led by the ALRC President Justice Mordecai Bromberg and experienced native title senior counsel, Tony McAvoy SC.

The ALRC is calling for submissions to the Inquiry and expects to release its consultation paper early in 2025. It is expected that the ALRC will deliver its final report to the Attorney-General by 8 December 2025.

For more information about the Inquiry or to provide a submission, please email: [nativetitle@alrc.gov.au](mailto:nativetitle@alrc.gov.au)

## Gulf Connect 2024

We recently had the great privilege of attending and sponsoring the Carpentaria Land Council's (CLCAC) 40th anniversary celebrations. The celebrations included the Gulf Connect 2024 Green Economies and Economic Development forum.

Set near the awe-inspiring salt pans located around Mougibi (Burketown), we heard equally inspiring recounts of the past experiences of the peoples of lower Gulf of Carpentaria region comprising the nine language groups of the Gangalidda, Garawa, Gkuthaarn, Kaiadilt, Kukatj, Kurtijar, Lardil, Waanyi and Yangkaal in their fight for land rights and native title recognition.

The forum provided a great opportunity for participants and Prescribed Bodies Corporate (PBCs) to explore the relationships, partnerships and investment required for sustainable projects and employment opportunities in the region. Forum presenters included both industry and government and provided insight into the economic development opportunities in things as broad as carbon economies and renewable energy, housing, and protection of country. Of particular interest were sessions on:

- 1. Carbon economies for PBC and current market opportunities (Indigenous Carbon Industry Network and Green Collar):** This session provided useful information on the various opportunities for PBCs to derive benefit from tapping into carbon markets, different methodologies for generating Australian carbon credit units, and explored the intersection between engagement in the carbon industry and use of traditional land and sea management practices to leverage those opportunities.
- 2. PBC renewable energy partnerships on country (Original Power, First Nations Clean Energy Network and Mirabou Energy):** This session explored the requirements and practical opportunities for PBCs and communities to take charge of their own energy solutions and needs.
- 3. Perspectives of a business owner in the lower Gulf and opportunities and challenges for a remote indigenous owned and operated tourism business (Savannah Lodge and Savannah Aviation, Yagurli Tours):** These presentations from the first Aboriginal owned hot-air balloon operator (Yagurli Tours) and a local business owner with a long association with Mougibi and lower Gulf region (Savannah Lodge and Savannah Aviation) highlighted the key role local businesses play in employment and wealth creation for residents of the region.

A running theme raised several times at the forum by participants, and those representing their communities, was the importance of the local population having a greater say in their own development. Concerns centred around the need for governments, at all levels, to do more to engage local residents, especially Traditional Owners and businesses, on both program design and implementation. Whether it be community or infrastructure projects, participants expressed a real need and desire to build capacity in the region to ensure design and implementation of projects were carried out by local residents and businesses.

We also had a chance to hear from and participate in discussions with the Commonwealth Department of Climate Change, Energy, the Environment and Water and the Queensland Department of Environment, Science and Innovation regarding World and National Heritage areas; and the Queensland Law Reform Commission's and Australian Law Reform Commission's latest consultations into mining objection reform (QLRC) and the future act regime (ALRC).

The leadership shown by CLCAC CEO Rachel Amini-Yanner and her team in organising the event was exceptional. CLCAC is a strong, regional land council that has faced many challenges but continues to vigorously advocate for the Gangalidda, Garawa, Gkuthaarn, Kaiadilt, Kukatj, Kurtijar, Lardil, Waanyi and Yangkaal Peoples that it represents.

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## Streamlining Native Title Regulations

Changes to native title regulations came into effect on 1 October 2024. Of significance is the commencement of the *Native Title (Tribunal) Regulations 2024 (Cth)* which replaces the previous *Native Title (Tribunal) Regulations 1993 (Cth)*. This Regulation helps facilitate the operation of the National Native Title Tribunal (NNTT) under the NTA. The two major changes to this Regulation are:

- 1. The removal of the application fee for filing an objection to an expedited procedure.** An expedited procedure is a future act that the government agency responsible for the act considers will not likely affect native title and is often used for grants of an exploration or prospecting licence.
- 2. A reduction of the information required when lodging an expedited procedure objection application.** Of note is the simplification of the prescribed information required in an applicant's



statement objecting to an expedited procedure. Previously, the requirements of the statement by an applicant were more prescriptive and included providing an outline of the type of evidence that the applicant will produce to support their objection. A new Expedited Procedure Objection Application form has been developed to be more user friendly and to reflect the changes in the Regulations.

For assistance with navigating an Expedited Procedure Objection or to discuss your specific situation, please reach out to our experienced legal team to see how we can help.

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## Helping to Build Sustainable PBCs

There are constant demands being put on the resources of PBCs as they try and fulfil their critical role in managing the interests and rights of traditional owners. The pressures of ensuring adequate funding for a PBC to carry out all its functions can be a challenge. Properly responding to regular Future Act Notices (**FANs**) or requests to negotiate Indigenous Land Use Agreements (**ILUAs**) can be one of those challenges faced by under-funded PBCs.

However, under section 60AB of the NTA and regulation 20 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth) (**NT(PBC) Regulations**), PBCs are entitled to charge reasonable fees for the time and resources required to negotiate agreements under the right to negotiate provisions of the NTA, or negotiating

ILUAs. PBCs can also charge a reasonable fee for responding to FANs. Although there is no prescribed amount under the NTA or the NT (PBC) Regulations, PBCs can set a reasonable fee for these services so long as they do not amount to a tax. Under s60AC of the NTA, the Registrar of Indigenous Corporations may give an opinion on the reasonableness of the proposed fee. The charging of fees can assist PBCs with the rationale being:

- 1. Administrative Costs:** Responding to FANs can be time-consuming. PBCs often need to consult with traditional owners, assess the impact of the proposed act, and possibly obtain legal advice or expert reports. These costs can add up quickly, especially for PBCs that are operating with limited funding.
- 2. Sustainability:** Many PBCs are small organisations, and the workload associated with managing native title rights can be significant. With limited resources, charging fees may be seen as a way to ensure that PBCs can continue to operate effectively and sustainably.

For assistance with your rights to charge fees for FANs or to discuss your specific situation, please reach out to our experienced legal team to see how we can help.

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If you have any questions, please do not hesitate to contact

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