



# Current reviews involving Commonwealth native title legislation

## Analysis of differences and intersections

October 2025

*This resource has been prepared by the Commonwealth Attorney-General's Department (AGD) for relevant stakeholders (including the Expert Technical Advisory Group) to support our consultation on the changes made to the [Native Title Act 1993 \(Cth\)](#) (Native Title Act) by the [Native Title Legislation Amendment Act 2021 \(Cth\)](#) (the Amendment Act), as well as to provide context to concurrent processes underway.*

### Australian Law Reform Commission (ALRC) Review of the Future Acts Regime (ALRC Review)

The ALRC is an independent agency (established under the [Australian Law Reform Commission Act 1996](#) (ALRC Act)) that provides recommendations for law reform to Government on issues referred to it by the Attorney-General.

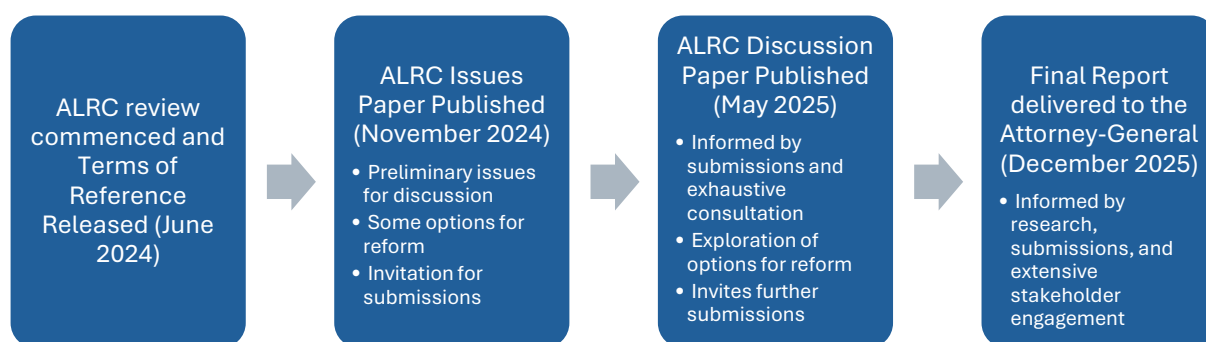
The former Attorney-General (AG) asked the ALRC to conduct a review of the future acts regime in the Native Title Act. The ALRC review, which commenced in June 2024, is limited in scope to reviewing the future acts regime, as contained in Part 2, Division 3 of the Native Title Act.

#### *How is the ALRC review different to AGD's evaluation?*

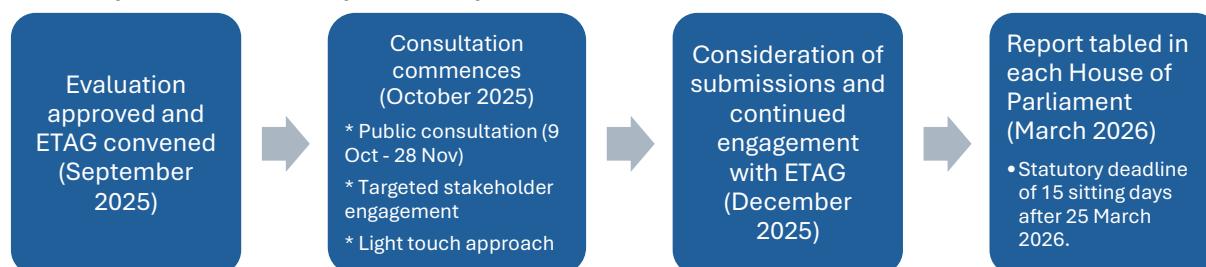
Unlike AGD's evaluation of the changes made in 2021 to the Native Title Act by the Amendment Act (the Evaluation), the ALRC review is an independent inquiry undertaken by the ALRC. It is informed by an extensive consultation process as a result of Recommendation 4 of the former Joint Standing Committee on Northern Australia in its report, [A Way Forward](#), released in October 2021. The report identified systemic issues in the way the future acts regime operates. The Evaluation instead is required to be conducted pursuant to s 209A of the Native Title Act and has the far narrower focus of assessing whether the amendments introduced are operating as intended. To date AGD has not received any feedback identifying issues or raising concerns with their operation.

The **below** flow charts and table may assist in differentiating between the two processes. To the extent that there is any overlap between the two processes, the department is happy for cross-references to be made to submissions made in the ALRC review.

Process of the ALRC review - for more info, see [here](#).



Process of AGD Evaluation – for more info, see [here](#).



#### ALRC review vs. AGD Evaluation

| Review           | ALRC review                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Evaluation                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Mechanism</b> | <u>Independent inquiry</u> by the ALRC <ul style="list-style-type: none"> <li>AGD has no direct role in the review except to the extent we have policy responsibility for the Native Title Act and the ALRC Act</li> <li>Exhaustive consultation process – papers on issues and potential reform options released and submissions invited</li> <li>Approach reflective of issues identified and concerns raised in relation to the future acts regime</li> <li>Report to be prepared independently by the ALRC and delivered to AG for consideration and any government response</li> </ul> | <u>Department-led</u> evaluation <ul style="list-style-type: none"> <li>Conducted by AGD</li> <li>Light touch approach – seeking feedback on whether amendments are operating as intended via survey questions</li> <li>Approach reflective of lack of feedback received or concerns raised on operation of amendments</li> <li>Report to be prepared by AGD for AG approval and tabling in Parliament</li> </ul> |
| <b>Scope</b>     | The entirety of the future acts regime (Part 2, Division 3 of the Native Title Act) <ul style="list-style-type: none"> <li>Involves consideration of broad policy questions and exploration of reform options</li> </ul>                                                                                                                                                                                                                                                                                                                                                                    | Specific amendments to the Native Title Act introduced in 2021 <ul style="list-style-type: none"> <li>Includes, but is not limited to, some provisions within the future acts regime (e.g. re Indigenous Land Use Agreements and s 31 agreements), however, views are only sought on the operation of the specific amendments in relation to the agreements, not the agreements in and of themselves</li> </ul>   |

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| Terms of reference | <p>The <a href="#">Terms of Reference</a> for this Inquiry ask the ALRC to consider:</p> <ul style="list-style-type: none"> <li>• the operation of the Native Title Act and the future acts regime for over 30 years;</li> <li>• the passage of almost a decade since the last review of the Native Title Act (<a href="#">Connection to Country: Review of the Native Title Act 1993 (ALRC Report 126)</a>);</li> <li>• the significance of the Native Title Act, 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;</li> <li>• 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;</li> <li>• 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;</li> <li>• the role of the future acts regime as a precursor to economic and other activities on native title land;</li> <li>• 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</li> <li>• 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.</li> </ul> | <p>The <a href="#">Terms of Reference</a> for the Evaluation asks the Department to consider whether the amendments are achieving their stated objectives (see <a href="#">Explanatory Memorandum</a>, Native Title Legislation Amendment Bill 2020 (Cth)). The objectives were to:</p> <ul style="list-style-type: none"> <li>• give greater flexibility to native title claim groups to set their internal processes</li> <li>• streamline and improve native title claims resolution and agreement-making</li> <li>• allow historical extinguishment over areas of national and state park to be disregarded where the parties agree</li> <li>• increase the transparency and accountability of RNTBCs</li> <li>• create new pathways to address native title-related disputes arising following a native title determination</li> <li>• confirm the validity of agreements made under Part 2, Division 3, Subdivision P of the Native Title Act (section 31 agreements) following the decision in <a href="#">McGlade v Native Title Registrar &amp; Ors</a> [2017] FCAFC 10.</li> </ul> |
| Source             | Referred by (former) Attorney-General                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Statutorily required under section 209A of the Native Title Act                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

### *Intersections between the ALRC Review and AGD Evaluation*

The below very limited specific intersections have been identified:

| Subject                                | Details                                                                                                                                                                                                                                                                                                                                                                                                                    | Approaches                                                                                                                                                                                                                                                                                         |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Indigenous Land Use Agreements (ILUAs) | Schedule 2 of the Amendment Act concerns ILUAs, which also fall within the future acts regime.                                                                                                                                                                                                                                                                                                                             | <ul style="list-style-type: none"><li>• The Evaluation will be limited in scope to the operation of the specific amendments introduced in relation to ILUAs</li><li>• The ALRC review will encompass a broad exploration of the operation of ILUAs.</li></ul>                                      |
| Section 31 Agreements                  | <p>Schedule 6 made amendments:</p> <ul style="list-style-type: none"><li>• to clarify the role of the government party in the negotiation of section 31 agreements</li><li>• for the Native Title Registrar create and maintain a public record of section 31 agreements</li></ul> <p>Schedule 9 of the Amendment Act confirms the validity of section 31 agreements.</p> <p>This falls within the future acts regime.</p> | <ul style="list-style-type: none"><li>• The Evaluation will be limited to the specific amendments introduced in relation to section 31</li><li>• The ALRC review will be concerned generally with the operation of the provision as a whole and its place within the future acts regime.</li></ul> |