

Fact Sheet #3 – Native Title Future Acts

What is a future act?

A future act is a proposition to use an area of land or waters in a way that impacts or extinguishes native title rights and interests. Examples of land use that require future acts include mining and exploration, fishing, tourism, development and in some cases legislation changes.

Future acts are put to the native title holders of a piece of land by the state or territory government once a plan to use the land has been proposed. The state or territory government then sends the proposal for this future act to the proscribed body corporate (PBC) of the piece of native title land.

What is the process involved in the creation of a future act?

Once a future act is sent by the state or territory government to the PBC of the native title claimants, the claimants are issued rights under the Native Title Act 1993. These rights include the right to be notified and consulted. Native title parties also have the right to negotiate any future acts, including the granting of mining leases.

This right to negotiate is not guaranteed. In some cases, the state or territory government may assess the future act to be

inconsequential or to have little impact to the native title land. In this case, the state or territory government may fast-track the procedure, meaning that the PBC will not have the right to negotiate with government or the business/group proposing to use the land.

In the case of a fast-tracked future act, PBCs have the right to object by lodging an objection application with the National Native Title Tribunal.

Almost all exploration and prospecting license applications are granted under a fast-tracked process. This is due to the assessment of state and territory governments (particularly Western Australia) that prospecting does not have a substantial enough impact on the community. State and territory governments make the assessment of whether an expedited process is appropriate by identifying whether:

- 1) The future act will interfere with the community and its social activities
- 2) The future act will interfere with any culturally significant sites or areas
- 3) The future act will majorly disturb any land or water.

If a future act does not meet any of these criteria, a state or territory government may deem it appropriate to expedite the process to bypass a negotiation process with the native title claimants. Claimants have 4 months from the day of notification to launch an objection to an expedited process.

In the case that negotiation proceeds under a future act, parties must negotiate in good faith for at least 6 months. The aim of any negotiation process is to reach an agreement about how any proposed land use may be carried out in a mutually agreeable manner.

In the case that mediation is required, the National Native Title Tribunal may mediate in the process of the negotiation.

Future Act Determinations

If an agreement cannot be reached, any of the three parties (government, native title holder and proposer) may ask the National Native Title Tribunal to make a binding decision instead. This may occur after at least 6 months of negotiation and is referred to as a future act determination. This determination is made within 6 months of being lodged. If it cannot be reached

within that time, the National Native Title Tribunal must advise the Attorney-General. If any of the parties disagree with the decision made by the National Native Title Tribunal, they may launch an appeal to the federal court.

Once an agreement or a determination is reached, an Indigenous Land Use Agreement ILUA to document this agreement is drawn up and the process to legitimise this ILUA is undertaken. (see ILUAs – factsheet #4)

What can the negotiation process of a future act achieve?

The negotiation of a future act may achieve a change to how the proposer use the land, a limitation to the actions or areas used, or compensation being issued to the native title group.

In some cases, native title claimants have been promised a certain number of jobs or been issued a lump sum of compensation. Future acts negotiation processes often result in the formation of an Indigenous Land Use Agreement (ILUA), which lays out in a legal document the conditions of land use and states any forms of compensation.

Examples of future acts and further resources

[Future act determination - capacity of native title party to consent \(nntt.gov.au\)](https://www.nntt.gov.au/future-acts/future-act-determination-capacity-native-title-party-consent)

[Jax Coal Pty Ltd Birri People Queensland \[2011\] NNTTA 46.pdf](#)

[YMAC – Future Acts / Service Agreements](#)

[Prescribed Bodies Corporate and Future Acts Fact Sheet \(nntt.gov.au\)](https://www.nntt.gov.au/future-acts/prescribed-bodies-corporate-and-future-acts-fact-sheet)

[MPS fact sheet future acts \(mpsllaw.com.au\)](https://www.mpslaw.com.au/future-acts-fact-sheet)