26 July 2025

Australian Law Reform Commission
nativetitle@alrc.gov.au

Dear Commissioners,

Re: ALRC Review of the future acts regime under the *Native Title Act 1993* (Cth)

Australian Energy Producers (AEP) welcomes the opportunity to provide comment to the Australian Law Reform Commission's discussion paper on the review of the future acts regime under the *Native Title Act 1993* (Cth).

As the peak body representing Australia's upstream oil and gas industry, AEP's members operate across many parts of the country where land is subject to native title claims or determinations. Aboriginal and Torres Strait Islander people are core stakeholders in petroleum exploration and production. The industry is a key driver of national economic prosperity and the prosperity of Indigenous communities across the country. The future acts regime is important to our members, underpinning their ability to engage constructively with Traditional Owners.

We strongly support a future acts regime that is fair, transparent, and delivers just outcomes for Traditional Owners while providing clarity and investment certainty for project proponents. Achieving this balance is essential to enabling mutually beneficial outcomes that uphold Indigenous rights and fosters sustainable development.

AEP supports the inclusion of Native Title Management Plans (NTMPs) in the statutory framework, provided they remain one of multiple available authorisation pathways, including Indigenous Land Use Agreements (ILUAs) and existing statutory mechanisms. Retaining this flexibility is important to ensure that proponents and Traditional Owner groups can tailor their approaches according to the circumstances and complexity of the activity proposed. It is important that NTMPs balance the rights to Native Title holders and freehold title holders, and we caution against introducing de facto veto powers where none exist for other land tenures.

We encourage the Commission to consider the establishment of a publicly accessible register of NTMPs to promote certainty about the status and validity of actions taken under such plans. This would help facilitate compliance and provide clarity for all parties. Moreover, periodic review of NTMPs by Traditional Owner groups would ensure that such agreements remain fit for purpose and reflect evolving community expectations. To support the consistency and efficiency of these plans, we recommend the development of a model NTMP template by the ALRC or NNTT.

In considering an impact-based model for categorising future acts, AEP is supportive of a risk-based, proportionate framework that aligns the level of procedural engagement with the potential impact of an activity. This model could improve efficiency and certainty, especially for low-impact exploration activities. However, the success of such a model hinges on the inclusion of clear statutory definitions

and guidance to avoid uncertainty. We urge the ALRC to ensure any reform package includes this guidance up front rather than deferring it to guidelines developed post-legislation. Safeguards must be included to avoid retrospective invalidation of acts where impacts were unforeseeable at the time of categorisation.

Activities that currently fall under expedited procedures or are governed by sector-specific frameworks, such as certain gas and petroleum developments, should be excluded from the impact-based model and continue to be governed by tailored procedural mechanisms that reflect the technical and operational nature of the activity.

We are also concerned about the potential duplication of requirements, particularly where consultation obligations already exist under state and federal environmental or planning legislation. Any new rights to negotiate or consult must avoid exacerbating consultation fatigue among groups and representative bodies.

On the issue of cost recovery for native title negotiations, AEP supports a model that is fair and transparent. Costs should be limited to reasonable expenses such as professional advice, travel, and participation in meetings, benchmarked against a standard cost schedule to provide clarity for all parties. Unlimited or unclear cost recovery risks undermining trust and delaying agreement-making.

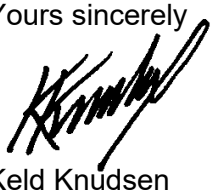
We also support efforts to improve the transparency of native title agreements, but caution that many of these agreements contain commercially sensitive information. Any move toward greater public availability should include the ability to redact sensitive material. Otherwise, there is a risk of setting unreasonable expectations around compensation and benefit-sharing that do not reflect the commercial or operational context of individual projects.

Finally, we support continued access to non-claimant applications as a means for proponents to seek certainty about the native title status of an area. Procedural compliance requirements, including notice obligations, should be clarified in the legislation to minimise disputes and delays.

AEP is committed to working in partnership with governments and Traditional Custodians to reinforce the industry's role in creating intergenerational wealth opportunities.

We appreciate the Commission's considered approach to these complex issues. AEP stands ready to assist further in refining the proposed reforms to ensure they deliver a future acts regime that is fair, durable, and effective. If you require additional information, please contact me on kknudsen@energyproducers.au.

Yours sincerely



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