

Native title report 2021

Guided submission

1 Introduction

The Native Title Report 2021 is a report being developed by the Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO. The report will focus on women's voices and stories about their experiences in the native title system. The report, which will be tabled in Federal Parliament, will inform the Government in its native title reform agenda as well as those in the sector who play a role in advocating for change.

To inform the report we want to:

- hear from Aboriginal and Torres Strait Islander women who have been or are native title claimants or holders, as well as experts working in the native title space
- hear about the way the native title system has (and has not) worked to deliver on the expectations of communities, and to deliver benefits to Aboriginal and Torres Strait Islander peoples
- hear about the ways that communities have addressed the challenges presented by native title and
- hear Aboriginal and Torres Strait Islander women's hopes and plans for the future of native title, including what needs to change and what that change should look like.

This guided submission is one of the ways we are gathering information and trying to hear about women's experiences and opinions regarding native title.

Submissions will be public unless you indicate otherwise. All submissions will be treated in accordance with our submissions policy.

You may have already completed some questions on background information in our survey of Aboriginal and Torres Strait Islander women involved in native title. Thank

you for your patience in answering some similar questions here. We have tried to keep duplication to a minimum.

This guided submission is longer than the survey and is an opportunity to provide more detail on your experiences of the native title system, and your opinions on what needs to change. Please write as much or as little as you wish.

2 Questions

2.1 Demographics and identity questions

1. Name: _____
2. Organisation: _____
3. Email address: _____
4. Are you:
 - i. Aboriginal
 - ii. Torres Strait Islander
 - iii. Aboriginal and Torres Strait Islander
 - iv. Not Aboriginal or Torres Strait Islander
5. Please tell us your current status (select all that apply):
 - i. A native title claimant
 - ii. A native title holder
 - iii. Intending to claim native title but have not yet done so
 - iv. I am a non-native title-holding Traditional Owner
 - v. I have been unable to claim native title
 - vi. Working (or have worked) as a professional in native title
6. In what ways have you been involved in native title? (Select all that apply):
 - i. Native title claimant
 - ii. Native title holder
 - iii. Non-native title-holding Traditional Owner
 - iv. Member of Prescribed Body Corporate (PBC)
 - v. Board member of a Prescribed Body Corporate (PBC)
 - vi. Board member of Native Title Representative Body (NTRB), Native Title Service Provider (NTSP)
 - vii. Active in putting together genealogical information for claim
 - viii. Active in putting together connection information for claim
 - ix. Witness in court in a native title claim

- x. Active in managing lands held under native title by a Prescribed Body Corporate (PBC)
- xi. Active in negotiating Indigenous Land Use Agreements (ILUAs) or 'future acts' (i.e. under the Native Title Act 1993)
- xii. Active in negotiating land use by third parties other than ILUAs or 'future acts' (i.e. negotiations outside of the Native Title Act 1993)
- xiii. Active as a visible negotiator in claims or ILUAs or other agreements
- xiv. Active in coordinating meetings (bringing claimant/ traditional owner groups together).
- xv. Active in uniting claimant/ traditional owner groups around shared priorities and/or mediating on points of disagreement

- xvi. As an anthropologist
- xvii. As an archaeologist
- xviii. As a cultural heritage expert
- xix. As a lawyer
- xx. Other _____

2.2 Questions on your experience of the native title system

The following statements and questions are intended as prompts. You may respond to any or all of the sections below, and write comments on anything else you consider relevant at the end.

(a) Protection of culture and cultural safety in native title processes

- 7. We are interested in hearing about your experiences of native title processes and in what ways these have promoted or undermined culture.
- 8. We are interested in hearing about whether you feel women's business sites have been respected; and whether women have been supported to maintain culture throughout native title processes.

(b) Conflict within native title groups and lateral violence

We understand that this issue may trigger distress for some respondents. Please note that you are under no obligation to answer this or any other question in this submission guide.

At the end of this submission we have included some contact details for organisations which may be able to help you if this submission has upset you.

In the Native Title Report 2011, then Commissioner Mick Gooda said:

“It is my view that the *Native Title Act 1993* (Cth) (Native Title Act), which codifies a process that can lead to the recognition of our lands, has the potential to generate positive outcomes for our communities. But too often this potential is not realised and lateral violence fragments our communities as we navigate the native title system.”

9. We are interested in understanding your experience of conflict in the native title space. For example, we are interested in hearing about:
 - i. Any ways in which you have seen the native title system contribute to conflicts, including pre and post-determination;
 - ii. The different ways that conflicts have been addressed, mediated and resolved.
 - iii. Whether your community been properly resourced to deal with the need for healing? If so, what did those resources look like? If not, what is needed?

(c) Gender in Native Title

10. We are interested in hearing about the roles women play in native title processes – in claims, post-determination management and negotiations, and in compensation applications. For example:
 - i. Do women participate more in some areas of the native title system more than others? If so, what are the key areas of focus for women?
 - ii. In your experience, do women have an equal say in decision-making in native title processes? (please provide examples if you can)
 - iii. Do you think women’s business is regarded as seriously as men’s business in the native title system. For example, are women’s places recognised in connection reports to the same degree as men’s places are recognised?
 - If not, we are interested in hearing why you think that is. For example, in your experience, have women’s responsibilities to family and community impeded their ability to demonstrate connection to country?

- If yes, we are interested in hearing about positive stories of how women's business has been recognised in the native title process, for example contributing to proving connecting to country.

11. In your experience, what factors have underpinned equality for women in native title processes? Where native title groups have struggled with this, why do you think that is?

12. How could women be better supported in the native title claim process, and in managing native title post-determination?

(i) *Governance and decision-making roles of women in native title*

13. We are interested in hearing about the governance and decision-making roles women take on in native title groups. For example:

- i. Have you observed women playing significant leadership and decision-making roles in negotiations with mining companies or government? If so, what were the surrounding conditions and circumstances? If not, why do you think women were not in such roles.
- ii. What role, if any, does the prospect of negotiating royalties and/or compensation (or the absence of such opportunities) have on women's participation and leadership in Prescribed Body Corporate (PBC) decision-making processes?
- iii. Considering the roles women play in negotiations regarding land and heritage, is there a difference when native title is involved compared to when it is not (for example when an Aboriginal Corporation is negotiating under state-based arrangements with no native title)?

14. We are interested in hearing about the other governance roles women play in communities either at the same time as, or instead of, governance roles in native title bodies such as PBCs. For example:

- i. Are women able to access governance roles in native title in the same way as they are able to access such roles in other sectors?
- ii. Do women prioritise governance roles in native title in the same way as they do governance roles in other sectors?

(ii) *Distribution of governance responsibilities*

- iii. To what extent are those men and women involved in governance of native title, the same men and women who are involved in governance of other community organisations?
- iv. Where there is a small number of people performing key governance roles across multiple sectors, how has this come about and, in your experience, how has this impacted those individuals' and their communities' capacity to facilitate well-informed and inclusive decision-making in native title processes?
- v. Where there is a wider distribution of responsibility across governance roles in communities, how has this developed and, in your experience, how has this affected communities' capacities to facilitate well-informed and inclusive decision-making in native title processes?

(d) Native title knowledge – succession planning

15. We are interested in hearing about how native title groups approach mentoring and supporting people to learn how to work effectively in the native title system. For example:

- vi. Does everyone in that group have an equal opportunity to get the required knowledge of the system?
- vii. Is there any marked difference in the proportion or cohort of people with knowledge of the claim process versus knowledge of post-determination processes? If so, please provide examples.
- viii. What kind of mentoring and succession planning have you observed or been part of, and who has been responsible for transferring knowledge about native title?
- ix. In your experience, are the people being supported to learn about the technical legal and economic aspects of native title processes the same people who are receiving knowledge about traditional law and caring for country? If not, what impacts does this have, if any?
- x. Does a lack of resources hamper effective transfer of knowledge and succession planning in the native title context? How are men and

women supported, if at all, to take on mentoring and leadership roles in transferring knowledge?

(e) Reform of the native title system

16. What are the key opportunities and challenges for Aboriginal and Torres Strait Islander peoples in the native title space today?
17. What changes to the native title system would you like to see?
18. What roles do you see women playing in a reformed native title system? How can women be better supported to take on those roles?

(f) Other comments

19. If you have any other comments to make or experiences to tell us, please do so here.

Thank you and referrals

Thank you for your time in contributing to the Native Title Report 2021 by completing this guided submission.

If this submission has triggered any distress as a result of the topics raised, the following organisations might be helpful for you:

- **The Healing Foundation** – the Healing Foundation is a national Aboriginal and Torres Strait Islander organisation that partners with communities to address the ongoing trauma caused by actions like the forced removal of children from their families <https://healingfoundation.org.au/>
- **Wellmob** – Social, emotional and cultural wellbeing online resources for Aboriginal and Torres Strait Islander People <https://wellmob.org.au/>
- To find an Indigenous psychologist or other local services, contact your local Aboriginal Community Controlled Health Organisation – (02) 6246 9300 <https://www.naccho.org.au/member-services/naccho-member-services/>
- **For immediate assistance contact one of the following services:**

- **Emergency 000** - If you or someone you know is in immediate danger please call 000
- **Suicide Call Back Service** 1300 659 467 – if you or someone you know is suicidal and you are looking for help please call this service
- **Lifeline** 13 11 44
- **Beyond Blue** 1300 22 46 36
- **DV Helpline** 1800RESPECT 1800 737 732
- **Kids Helpline** 1800 55 1800
- **Alcohol and drug information and support services**
<https://aodknowledgecentre.ecu.edu.au/key-resources/organisations/1435/?title=Alcohol%20and%20Drug%20Information%20and%20Support%20Services%20%28ADIS%29>