

ALRC Review of the Future Acts Regime

Submission to the Australian Law Reform Commission

Lowitja Institute, July 2025



Inquiry into the future acts regime in the *Native Title Act 1993*
Australian Law Reform Commission

July 2025

Dear Australian Law Reform Commission,

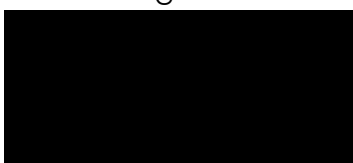
Re: Review of the Future Acts Regime in the Native Title Act 1993

Lowitja Institute is Australia's only national Aboriginal and Torres Strait Islander community controlled health research institute, named in honour of its copatron, the late Dr Lowitja O'Donoghue AC CBE DSG. It is an Aboriginal and Torres Strait Islander organisation working for the health and wellbeing of Australia's First Peoples through high-impact quality research, knowledge exchange and by supporting a new generation of Aboriginal and Torres Strait Islander health researchers. Established in January 2010, Lowitja Institute operates on key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing and the need for the work to have a clear and positive impact.

Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing. Significant to implementing cultural determinant driven health policy is the recognition that policy making must be anchored in Aboriginal and Torres Strait Islander ways of knowing, being and doing, and that self-determination is essential for a holistic approach to bettering the health and wellbeing of our communities.

Based on this approach, we welcome the opportunity to provide a submission to Informing the agenda of the inquiry into the future acts regime in the *Native Title Act 1993*. Please find our submission attached. We would welcome any opportunities to further discuss our recommendations therein.

Warm regards



Rosemary Smith
Executive Manager, Policy & Consulting, Lowitja Institute



About the Lowitja Institute

The Lowitja Institute is a national Aboriginal and Torres Strait Islander Community Controlled Organisation working for the health and wellbeing of Aboriginal and Torres Strait Islander peoples through high impact quality research, knowledge translation, and by supporting Aboriginal and Torres Strait Islander health researchers.

Established in January 2010, we operate on the key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for the work to have a clear and positive impact.

At the Lowitja Institute our research is built on priorities identified by Aboriginal and Torres Strait Islander peoples. We aim to produce high-impact research, tools and resources that will have positive health outcomes for Aboriginal and Torres Strait Islander peoples. To guide this, we work by five key principles that underpin our approach to research. These principles are:

1. **Beneficence** – to act for the benefit of Aboriginal and Torres Strait Islander people in the conduct of our research,
2. **Leadership** by Aboriginal and Torres Strait Islander people,
3. **Engagement of research end users** (Aboriginal and Torres Strait Islander organisations and communities, policymakers, other potential research users),
4. **Development of the Aboriginal and Torres Strait Islander research workforce**, and
5. **Measurement of impact** in improving Aboriginal and Torres Strait Islander people's health.

General preamble

As the national institute for Aboriginal and Torres Strait Islander health research, and an Aboriginal community-controlled organisation, Aboriginal and Torres Strait Islander decision-making is central to the work the Lowitja Institute undertakes. We engage in policy and advocacy work that contributes to a range of key policy debates related to Aboriginal and Torres Strait Islander health and wellbeing. This work is underpinned by our 2022-2025 Policy Priorities¹, priorities that have been determined alongside Aboriginal and Torres Strait Islander members, organisations,

¹ Lowitja Institute, 2023, *Policy Priorities 2022-2025*, Lowitja Institute, Melbourne



researchers, and communities, and reflect not only community priorities and needs, but also emerging government policy contexts and topics on which the Aboriginal and Torres Strait Islander health sector is advocating.

Based on this experience we offer the following general comments.

There are several opportunities for improvement to the Future Act Regime that would work to better support Aboriginal and Torres Strait Islander health and wellbeing. These include exploring how future acts may impact directly on health of Aboriginal and Torres Strait Islander people, how future acts will likely play a role contributing to climate change, and how the Future Act Regime can work to better support Aboriginal and Torres Strait Islander sovereignty and self-determination.

While the determination of Native Title recognises the connections of Aboriginal and Torres Strait Islander peoples to Country, the repeated approval of prospecting licenses, exploration licenses and extractive leases over native title lands and waters despite objections from Native Title Holders demonstrates the inequity in the Native Title process. Despite objections over potential damage to cultural heritage, changing access to Country, Native Title rights and interests continue to be impacted, and where objections exist, Native Title rights and interests are not always upheld, therefor reinforcing the inequitable power dynamics when non-indigenous views take priority. No does not mean no.

While the ALRC Issues papers notes that there are no native title rights and interests in minerals, gas, or petroleum, there are many cases where extractive industries have extinguished native title rights and interests. These include the destruction of Juukan Gorge in the Kimberley which destroyed at least 45,000 years of cultural heritage, the approval of the Adani Coal mine on previously awarded native title land which was supported by a very small majority (7 of 12) native title claimants.^{2,3}

² HEAL Network & CRE-STRIDE, 2021, *Climate Change and Aboriginal and Torres Strait Islander Health*, Discussion Paper, Lowitja Institute, Melbourne p. 18

³ Ben Smee, July 12 2019, 'Adani land-use agreement: court dismisses Indigenous group's appeal', The Guardian accessed June 12 2025.



Submission

The connection between Country and Health – the cultural determinants

For millennia, Aboriginal and Torres Strait Islander peoples have kept their cultures strong to nurture their health and wellbeing. Connection to Country, cultural expression and continuity, self-determination and leadership, Indigenous beliefs and knowledge are key domains that form the cultural determinants of health. There are many ways, for many Aboriginal and Torres Strait Islander peoples of how physical, mental, and spiritual health are inextricably linked to having balanced, harmonious connections to kinship and culture and to the total wellbeing of their community and Country. This may include a connection to country, living on country, caring for country, spiritual connection and access to health and traditional foods.⁴

By fostering a sense of identity, pride, belonging and autonomy, being on and caring for Country empowers and promotes health. Caring for Country is not just the physical management of a geographic location, but refers to tending to the values, places, resources, stories and cultural obligations associated with that area as well as processes of spiritual renewal, connection with ancestors, maintenance of kin relations and food provision.⁵

The widespread and ongoing exclusion of Aboriginal and Torres Strait Islander peoples from accessing and managing traditional homelands creates intense trauma and grief, which creates and exacerbates health inequities. Conversely, being on and caring for Country is connected to positive social, emotional and physical health benefits to people, communities and Country.⁶

⁴ Pat Dudgeon [Bardi], Chontel Gibson [Gamilaraay], Roz Walker, Abigail Bray, Rama Agung-Igusti, Kate Derry, Paul Gray [Wiradjuri], Rob McPhee [Aboriginal], Stewart Sutherland [Wiradjuri], and Graham Gee [Aboriginal], 2025, Social and Emotional Wellbeing: a Review, Lowitja Institute, Melbourne

⁵ Lowitja Institute, 2020, We nurture our culture for our future, and our culture nurtures us, Close the Gap Campaign Steering Committee, p36

⁶ Pat Dudgeon [Bardi], Chontel Gibson [Gamilaraay], Roz Walker, Abigail Bray, Rama Agung-Igusti, Kate Derry, Paul Gray [Wiradjuri], Rob McPhee [Aboriginal], Stewart Sutherland [Wiradjuri], and Graham Gee [Aboriginal], 2025, Social and Emotional Wellbeing: a Review, Lowitja Institute, Melbourne



Self determination

As advocated in the June 2025 Lowitja Institute's Discussion Paper *Indigenous-led Rights-based Approaches to Climate Litigation* mechanisms for sovereignty need to be asserted, and embedded through Aboriginal and Torres Strait Islander leadership, into any future land agreements related to Aboriginal and Torres Strait Islander peoples' land or water interests. This should reassert Aboriginal and Torres Strait Islander sovereignty and relationship with the land and sea.

A more equitable Future Act regime requires developing decision making processes that are led by Aboriginal and Torres Strait Islander people and embed Aboriginal and Torres Strait Islander self determination and sovereignty. It is notable that the Native Title Tribunal, which holds significant power in the decision making processes does not currently consist of a majority Aboriginal and Torres Strait Islander leadership.

Government parties need to build capacity to understand Indigenous world views, and cultural beliefs so that the cultural load is not just placed on Native Title Claimants or Aboriginal and Torres Strait Islander people working the public service. This includes developing a deep understanding of how historical injustices, the ongoing impacts of colonisation and systemic racism have created the cultural disruption and intergenerational trauma, which has had a profound effect on Aboriginal and Torres Strait Islander people's health and wellbeing. As noted in the ALRC discussion paper, Aboriginal and Torres Strait Islander peoples 'find themselves often having to defend and explain, over and over again, their native title rights and interests in the future acts process' which claimants reported as re-traumatising. This cultural load is echoed by Aboriginal and Torres Strait Islander people across sectors and systems.

Whether government parties are not aware of the impact of future acts on cultural heritage or choose to navigate/misalign the public interest in opposition to Aboriginal and Torres Strait Islander rights and interests – this compounds ongoing trauma, entrenches health inequities, exacerbates and accelerates the impact of climate change. Despite Native Title holders objections, and repeated appeal attempts the Northern Territory Government approved a water licence to extract 40,000 megalitres of water per year over 30 years to grow export crops, which threatens 29 sacred sites and songlines connected to the Akwerlpe-Waake, Iliyarne,



Lyentyawel Ileparranem and Arrawatyen People.⁷ This is only one case of Australia's history of prioritising water commercialisation, overextraction, diversion, and pollution over protecting cultural resource sites across Australia.

Climate Change and Health

Climate change is having a significant impact on connections to Country. Climate change is directly impacting health by driving, more extreme heat waves, drought, flooding, physical illness and indirectly contributing to health inequities through rising food and water insecurity, pollution of air and waters, increasing and changing patterns of vector borne diseases, housing and energy security, and health service delivery. The destructive impact of climate change is driving loss of culture, psychological distress, trauma, disrupted protective kinship, cultural and spiritual connection to Country, increased socioeconomic disadvantage, and lack of access to health services.^{8,9,10}

Despite contributing the least to climate change, the threat and impact of climate change induced threats and impacts is having - and will continue to have - a disproportionate impact Aboriginal and Torres Strait Islander peoples health and wellbeing.

Sacred sites, animals and landscapes are intertwined with self for many Aboriginal and Torres Strait Islander people, and their loss through severe weather patterns and natural disasters can compound pre existing trauma caused by historical dispossession. Witnessing unprecedented climatic events such which affect significant landforms, animals, plants and sacred sites on Country has a profound impact on Aboriginal and Torres Strait Islander peoples health wellbeing. While Aboriginal and Torres Strait Islander people have a unique set of skills and deep knowledge to develop climate change mitigation and adaptation strategies,

⁷ Central Land Council, 'Native title holders to decide next steps following Singleton water licence appeal decision', 12 May 2025, Central Land Council, accessed June 11 2025. .

⁸ Pat Dudgeon [Bardi], Chontel Gibson [Gamilaraay], Roz Walker, Abigail Bray, Rama Agung-Igusti, Kate Derry, Paul Gray [Wiradjuri], Rob McPhee [Aboriginal], Stewart Sutherland [Wiradjuri], and Graham Gee [Aboriginal], 2025, Social and Emotional Wellbeing: a Review, Lowitja Institute, Melbourne

⁹ HEAL Network & CRE-STRIDE, 2021, *Climate Change and Aboriginal and Torres Strait Islander Health*, Discussion Paper, Lowitja Institute, Melbourne

¹⁰ Francis Nona (Dhoeybaw Clan), Associate Professor Veronica Matthews (Quandamooka), Associate Professor Nina Lansbury, Kristina Vine, and Lillian Ireland (Melukerdee. 2025, Indigenous-led Rights-based Approaches to Climate Litigation, Discussion Paper, Lowitja Institute, Melbourne



from caring for and protecting country for millennia, there is a need for government action and regulation that work to repair, restore and protect Country from future harm. This should include a closer consideration of how future acts may contribute to exacerbating the impacts of climate change, and this should be more explicit in the criteria, evaluation and approval process of impact based assessments explored in Question 28 of the discussion paper.