



Prescribed Bodies Corporate (PBCs) and Future Acts

What is a future act?

A future act is a proposal to deal with land or waters in a way that affects or extinguishes native title rights and interests. Examples of future acts include the grant of a mining or exploration tenement, grants of leases and licences, dedication of reserves, construction of facilities for the public, or the compulsory acquisition of land.



*The Koori Mail publishes
all future act notices
issued by each state and
territory government.*

How will my PBC know about a future act?

Your PBC will receive a notice about the proposed future act from the relevant local, state or territory government. The type of notice the PBC receives will depend on the kind of future act involved. Common examples are notices issued under s 24MD(6B) of the *Native Title Act 1993* (Cth) (NTA) (Section 24MD Notices) and notices issued under s 29 of the NTA (Section 29 Notices). Other notices might come from your local government asking you to comment on an activity they intend to undertake on native title land, such as the construction of facilities for the public.

*Your PBC may need to seek legal
advice about what procedural rights
apply in the circumstances.*

Why do we get these notices?

The purpose of a notice is to give your PBC the opportunity to have input into the way the proposal goes ahead. This is known as a 'procedural right'. Each type of notice gives your PBC different procedural rights. This could be a right to comment, a right to be consulted, a right to object or a right to negotiate. Some notices may require your PBC to take certain actions to exercise its procedural rights, so it is important to know what those rights are and what you need to do.

How do we manage these notices?

Sometimes PBCs will receive a large number of notices, so it is important to come up with a way to manage incoming notices. For example, the PBC could assign a single person to look after all future act notices. That person may need to act as an agent for the PBC in dealing with the state or territory government, the NNTT and other parties such as mining companies. They would first get instructions from the PBC. Whoever is responsible for managing future act notices needs to be available to be contacted by other parties and have access to phone and email.

For more information on PBCs and managing future acts, see the PBC website at www.nativetitle.org.au.

Administrative tips for PBCs to manage future acts

- ✓ Ensure the correct Address for Service for your PBC is recorded on ORIC's Public Register.
- ✓ Maintain a database/list of notices received.
Record:
 - when the notice was received
 - who issued the notice (the state/territory government or a mining/resource company); and
 - any key dates such as a deadline for making an objection.
- ✓ Maintain a list of who to contact at:
 1. the local, state or territory government
 2. the NNTT
 3. any mining or resource companies doing activities in your PBC's area.
- ✓ Maintain a Future Act Calendar – enter key dates so you don't miss any deadlines.

What happens after my PBC receives a future act notice?

This will depend on the type of future act and the procedural rights that apply to it. The contact details for the party proposing the activity should be set out in the notice. The notice should also contain information about what kind of response is needed, and how to make an objection (if that is one of the procedural rights).

Mining, the Expedited Procedure and the Right to Negotiate

Some mining activities such as prospecting and exploration may have less impact on the land than a full-scale mining operation. If the state or territory government considers the activities are low-impact, the future act notice for the grant of the tenement will include a statement that the government thinks the 'Expedited Procedure' applies. This is a 'fast-tracking' process and, if it applies, it means the PBC will not have the right to negotiate with the government and mining company about the proposed development.

The PBC can object to the expedited procedure applying to the future act by lodging a Form 4 objection application with the NNTT.

If the notice does not include the statement that the Expedited Procedure applies, the 'Right to Negotiate' process will apply. This means that negotiations have to take place before a mining tenement can be granted (see below).

The PBC can object to this 'fast-tracking' process – see below for timeframes that apply for making an objection.



Are there any deadlines that apply?

Yes! Different deadlines apply to different types of future acts, and should be stated on the notice.

Your PBC needs to be aware of its rights and obligations under the NTA.

For notices about the compulsory acquisition of native title lands, and grants of mining leases and licences, the following deadlines apply:

Section 24MD Notices

- Objections must be made within 2 months from the Notification date set out in the Section 24MD Notice.

Section 29 Notices

- Objections against the Expedited Procedure must be made within **4 months** from the Notification date set out in the Section 29 Notice.
- Parties involved in the Right to Negotiate process must negotiate in good faith for a minimum of **6 months** from the Notification date set out in the Section 29 Notice.

Reaching agreement on a future act

There are three parties involved in the negotiations: the state or territory government, the proponent and the PBC. All parties must negotiate in good faith and the aim of the process is for the parties to reach agreement about the proposed development and how it will be carried out.

More information about what negotiating in good faith requires can be found on the [NNTT website](#).

What about mediation?

Any party can ask for assistance from the NNTT in the negotiations. A NNTT Member or staff member can be appointed to mediate between the parties.

What happens if we can't reach agreement?

If the parties cannot reach agreement, after 6 months any party can ask the NNTT to make a binding decision about whether the proposed development can go ahead or not. This is called a Future Act Determination Application (FADA). A FADA decision is generally made within 6 months of the party making the application.

A party can appeal the decision of the NNTT to the Federal Court. For more information on these future act processes see the NNTT's website or contact your local NNTT office to speak with one of our staff members.

Remember

If the NNTT is involved in a future act matter, other timeframes might apply for a PBC, such as deadlines for providing documents, or hearing dates. These timeframes and conferences ensure the matter is progressing towards a resolution.

If your PBC is struggling to meet timeframes set by the NNTT, or if there are any questions about the process, contact the NNTT.

You can contact the NNTT for any further information about the matters discussed in this fact sheet:

- **National Native Title Tribunal** – GPO Box 9973 in Brisbane, Cairns, Melbourne, Perth and Sydney
- If you need someone to contact you about a PBC matter, email enquiries@nntt.gov.au and leave your contact details.
- Information is also available at www.nntt.gov.au

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