



What is a Prescribed Body Corporate (PBC) and what does it do?

What is a Prescribed Body Corporate?

The *Native Title Act 1993* (Cth) (NTA) requires that native title holders have a corporation to manage and protect their native title rights and interests. This is called a Prescribed Body Corporate – or PBC.

PBCs are set up and registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act).

As part of the native title determination process before the Federal Court, native title holders are required to nominate the PBC they want to manage their native title.

The native title holders must also decide whether the PBC will act as an agent for the native title holders OR hold their native title rights and interests on trust. For an explanation of the difference between agent PBCs and trustee PBCs, see the PBC website at www.nativetitle.org.au.

What happens to the PBC after the native title determination?

Once the determination is made, the National Native Title Tribunal (NNTT) must register the determination on the National Native Title Register (the Register). The Register entry, which is publicly available, includes the name and contact details for the PBC. When the determination is entered onto the Register, the PBC becomes officially registered under the NTA. This makes it a Registered Native Title Body Corporate (RNTBC).

As soon as a PBC is registered (as an RNTBC), there are compulsory requirements and duties the PBC must carry out, so it is important the people running the PBC (the Board of Directors) understand these obligations before the determination takes place.



PRE-DETERMINATION

POST-DETERMINATION

Native title claimants make native title claim

Establish PBC

Federal Court determination of native title and PBC registered with the NNTT

PBC becomes known as RNTBC for native title holders

What is the role of the PBC?

What the PBC can and can't do is governed by the NTA and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (PBC Regulations), as well as the CATSI Act and the CATSI Regulations. Each PBC is required to have a Rule Book, which sets out how the PBC will run day-to-day.

The PBC is the first point of contact for government and other parties (for example, mining companies) who wish to talk with the native title holders or undertake activities on native title land. The PBC is responsible for consulting with and getting the consent of the native title holders

about activities proposed by government or other parties on their country.

The PBC will also be responsible for dealing with Future Act notices, including for activities relating to the management or regulation of water and airspace, the dedication of reserves, and/or construction of facilities for the public (under ss 24HA, JA and KA of the NTA).

The Office of the Registrar of Indigenous Corporations (ORIC) has your PBC's contact details recorded on its Public Register (online). Let them know if these are not correct by sending an email to info@oric.gov.au or calling 1800 622 431.

The NNTT has a template Reg 9 certificate attached to its application form to assist applicants applying for registration of a Body Corporate Indigenous Land Use Agreement.

What is 'consultation and consent'?

One of the compulsory duties of a PBC is that it must consult with and obtain the consent of the native title holders before decisions are made which affect their native title rights and interests (including extinguishment).

This is the way native title holders tell the PBC what to do when a decision is to be made that will impact their native title. For example, entering into a mining agreement, or entering into an Indigenous Land Use Agreement which allows government or other parties to access and do activities on native title land, are native title decisions that require consultation and the consent of the native title holders. The PBC Regulations set out how PBCs must consult. Usually, the process will involve a meeting of all the native title holders and the Directors of the PBC Board.

Under Regulation 9, a PBC must provide evidence that it has carried out the consultation process for each native

title decision it makes. A PBC must prepare a certificate showing that it has obtained the informed consent of the native title holders before it can surrender native title, make a native title compensation application or make any decisions that affect native title holders' enjoyment and exercise of their native title rights and interests.

What is a 'Reg 9 certificate'?

The evidence must be in the form of a certificate signed by the PBC. The certificate must contain specific details about the consultation, consent and decision-making processes that led to the native title decision being made. ORIC can make an assessment of the certificate at the request of a common law holder to check that it contains the information and is signed according to the requirements.

The National Indigenous Australians Agency (NIAA) has a full explanation in its discussion paper: [PBC decision-making, certification and fees for service](#).

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

- National Native Title Tribunal – PO Box 12440, George Street Post Shop, Brisbane Qld 4003
- If you need someone to contact you about a PBC matter, email PBCassist@nntt.gov.au and leave your contact details.
- Information is also available at www.nntt.gov.au