



INFORMATION SHEET FOR PBCs

THE OFFICE OF THE REGISTRAR OF INDIGENOUS CORPORATIONS (ORIC)

The Registrar is an independent statutory office holder who administers the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The Office of the Registrar of Indigenous Corporations supports the Registrar. The CATSI Act guides how Aboriginal and Torres Strait Islander corporations are run. The Registrar works in partnership with Aboriginal and Torres Strait Islander people to build strong futures through the good governance of their corporations.

Contact ORIC on freecall 1800 622 431
(not free from mobiles)

THE NORTH QUEENSLAND LAND COUNCIL

The North Queensland Land Council Native Title Representative Body Aboriginal Corporation is a proactive Aboriginal corporation recognised as a native title representative body (NTRB) under section 203AD of the *Native Title Act 1993* (Cwlth). Its role is to preserve, protect and promote the recognition of native title in the North Queensland representative region. It tries to resolve native title claims and support the ongoing goals of recognised traditional owners (TOs). The North Queensland Land Council has achieved a number of native title determinations by consent and negotiated a large number of Indigenous land use agreements (ILUAs).

**Contact the North Queensland Land Council
on freecall 1800 814 770**

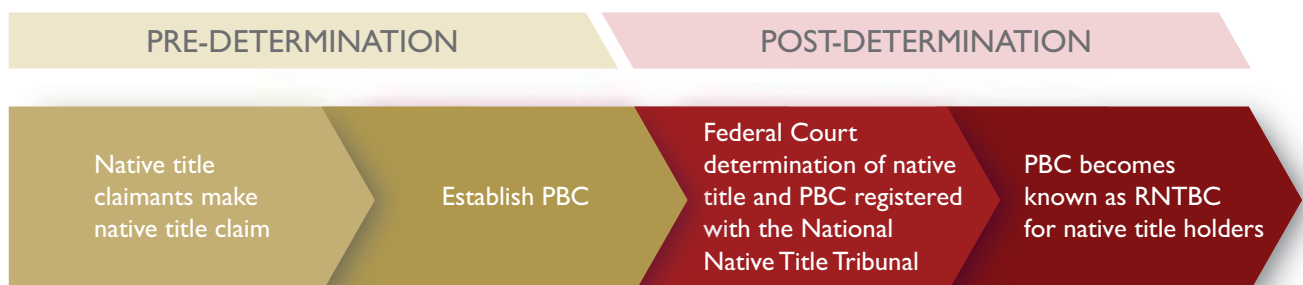
HOW ORIC HELPS CORPORATIONS AFTER NATIVE TITLE DETERMINATION

The CATSI Act and native title

If the Federal Court hands down a determination of native title then the *Native Title Act 1993* requires that the court should also determine which corporation is to manage native title on behalf of the native title holders. The Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations) require that corporation to be registered under the CATSI Act.

These corporations are known as prescribed bodies corporate or PBCs. Once a PBC is entered on the National Native Title Register it becomes a registered native title body corporate (RNTBC).

PBC is the more commonly used term to refer to both PBCs and RNTBCs. The following diagram summarises the process.



To make sure that the Native Title Act and the CATSI Act work together and don't conflict with each other, the CATSI Act has special provisions for native title and RNTBCs.

ORIC has produced a paper, *Interaction between the Corporations (Aboriginal and Torres Strait Islander) Act 2006 and the Native Title Act 1993*, which explains the policy reasons for provisions of the CATSI Act that only apply to corporations that hold or manage native title.

This paper is available on the Registrar's website, www.oric.gov.au, or by telephoning ORIC.

ROLES AND RESPONSIBILITIES OF PRESCRIBED BODIES CORPORATE (PBCS)

PBCs are corporations incorporated under the CATSI Act and determined by the court to manage native title on behalf of the traditional owners (TOs).

What the law says

When the Federal Court decides that native title exists in land, there needs to be some entity that can manage that native title for the purposes of the law. For example, when someone comes along who wants to explore for minerals, there needs to be a legal entity that they can talk to so they can enter into a legal agreement. The best entity for this is a corporation created especially to manage the native title on behalf of the TOs. Native title rights are held communally by the group (not by individuals but all TOs together).

A corporation that is set up to manage or hold native title is called a prescribed body corporate or PBC. The TOs still own the native title and manage it through their traditional laws of custodianship, but the PBC is the body they use to deal with non-Indigenous law, such as negotiating agreements or entering into contracts.

PBCs have legal responsibilities under:

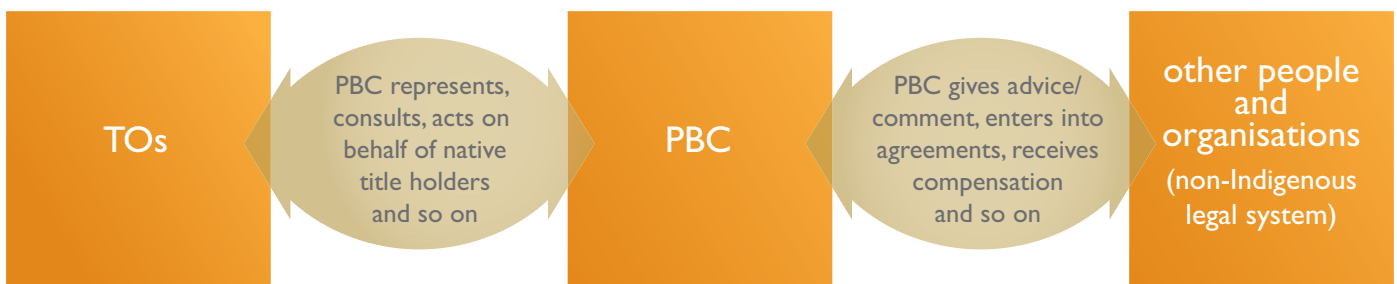
- the *Native Title Act 1993*
- the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations)
- the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- other Commonwealth, state and territory legislation.

PBCs mainly exist to:

- protect and manage determined native title in accordance with the wishes of the TOs
- ensure certainty for governments and other parties with an interest in accessing or regulating native title lands and waters by providing a legal entity through which to conduct business with the TOs.

PBCs are the 'go-between' for TOs when they have to deal with the non-Indigenous legal system.

Through a PBC, TOs can protect their native title rights and interests.



PBCs and native title law

As a PBC looks after native title for the TOs, it has a lot of responsibilities. For example, if the Native Title Act says that a developer must give a notice to the TOs about a proposal that will affect native title (called a 'future act'), the notice must be sent to the PBC. Generally speaking, the PBC responds on behalf of the TOs, after first talking with them and finding out what they would like to do.

All the functions and responsibilities of PBCs are described in the Native Title Act and the PBC Regulations as summarised in the following table.

PBC functions and responsibilities under the Native Title Act and PBC Regulations

Functions and responsibilities related to:*	Native Title Act	PBC Regulations
Overall functions		<ul style="list-style-type: none"> <i>managing</i> the native title rights and interests of all TOs <i>performing</i> any other function relating to the native title rights and interests as directed by the TOs
Future acts	<ul style="list-style-type: none"> <i>receiving</i> future act notices and advising TOs about such notices <i>exercising</i> rights of the TOs, including commenting on, objecting to and negotiating about proposed future acts <i>preparing</i> submissions to the National Native Title Tribunal or other decision-making bodies about the right to negotiate matters, including whether negotiations have occurred in good faith 	<ul style="list-style-type: none"> <i>preparing</i> and maintaining documentation as evidence of consultation and consent <i>consulting</i> and considering the views of the native title representative body (NTRB), such as the North Queensland Land Council, or a native title service provider (NTSP) for an area about proposed native title decisions
Native title determination and compensation applications	<ul style="list-style-type: none"> <i>considering</i> compensation matters and bringing native title compensation applications in the Federal Court (if the determined native title is later extinguished) <i>bringing</i> revised or further native title determination applications in the Federal Court (if the original determination is to be varied or changed) 	
Agreements	<ul style="list-style-type: none"> <i>negotiating</i>, implementing and monitoring native title agreements 	
Money		<ul style="list-style-type: none"> <i>holding</i> money (including payments received as compensation or otherwise relating to the native title rights and interests) in trust for the TOs <i>investing</i> or otherwise applying money held in trust as directed by the TOs

*There are overlaps in these categories, for example, agreements relate to determination and compensation applications, and future acts.

PBCs and the CATSI Act

The obligations of PBCs under the CATSI Act include conducting directors' meetings, maintaining a register of members, conducting annual general and special meetings, keeping accounts and records, and lodging documents with the Registrar of Indigenous Corporations.

The CATSI Act distinguishes between 'small', 'medium' and 'large' corporations, based on income, assets and the number of employees. The classified size of a PBC can be found on the Registrar's website, www.oric.gov.au.

All corporations must lodge reports each year with the Registrar by 31 December. These include a general report, and in some cases audited financial statements and a directors' report.

Functions under other legislation

PBCs may also have functions or obligations under other Commonwealth, state or territory legislation. These will vary according to requirements of the legislation and the nature of the native title rights held. PBCs that manage exclusive native title rights (in other words, native title that enables them to exclude other people from entering the land) are likely to be subject to a number of land management obligations in the same way as other land owners.

PBCs may also have cultural heritage functions to perform under state and territory legislation. Funding to PBCs for these functions is sourced from the responsible state/territory agencies.

Community expectations

PBCs may also be expected to fulfil broader roles for their TOs and Aboriginal and Torres Strait Islander community. For example, they may be asked to become involved in activities such as town planning, social harmony projects, cultural protocols, welcome-to-country ceremonies, interpretive and cultural signage, job creation, training and economic development. It is up to the directors and members of each PBC to decide whether they want the PBC to undertake these activities.

PBCS AND FUNDING

NTRBs, such as the North Queensland Land Council, and NTSPs can apply to use Native Title Program funds to help with establishing, incorporating and registering a PBC, and may give in kind support with things such as advice or help with communications. Where necessary, NTRBs/NTSPs can help PBCs to perform their statutory functions (for example, in helping a PBC to negotiate a future act agreement, an NTRB/NTSP could fund a meeting at which the PBC consults with and seeks consent from the TOs before making a decision to agree to a future act).

Since 2006, NTRBs/NTSPs and PBCs can also apply for Native Title Program funding for PBCs to meet their administrative costs. For more information contact the local NTRB or NTSP.

PBC AS TRUSTEE OR AGENT

According to the Native Title Act, a PBC may hold native title in trust for the TOs or act as an agent for the TOs.

TOs must decide whether the PBC will:

- hold the native title in trust for the TOs (known as a 'trustee PBC') or
- manage the native title as an agent for the TOs who own the native title (known as an 'agent PBC') (Native Title Act, s. 56).

Given the requirements of the PBC Regulations, the outcome is the same—the PBC has a duty to manage the native title on behalf of the TOs, including consulting them about key decisions. It is entirely up to each group of TOs to decide whether to have a trustee or agent PBC.

How much consultation?

The PBC Regulations require that a PBC (trustee or agent) must consult with the TOs and get their consent whenever a native title decision needs to be made.

At least five people must be consulted by a PBC before making decisions about native title.

PBC Regulation 9 says that compliance can be proved if there is a certificate signed by at least five people who are TOs. Note that the five people who sign the certificate must be TOs whose native title rights and interests will be affected.

Determinations do not drill down to the level of who, within the group under traditional law and custom, has the right to speak for certain geographical locations within the determined native title area. The native title is declared to belong to the whole group. In this sense, any member of the group can say that their native title rights and interests are affected by any native title decision.

Obviously a PBC should take a sound and prudent approach to ensure that the people who sign the certificate include representatives of the families or people with responsibility under traditional law.



FURTHER INFORMATION

Office of the Registrar of Indigenous Corporations

Freecall: 1800 622 431
Website: www.oric.gov.au

North Queensland Land Council

Freecall: 1800 814 779
Website: www.nqlc.com.au

National Native Title Tribunal

Freecall: 1800 640 501
Website: www.nntt.gov.au