

More examples of decisions in an RNTBC

This table provides some specific examples of different types of decisions RNTBCs either make or consult with and seek consent from common law holders, before the RNTBC acts to implement the decision. This list is not exhaustive.

Type of decision	Nature of the decision	Decision makers	What process for deciding
Native title (high level)	Membership eligibility —whether people or groups who are not common law holders can be eligible for corporation membership	Common law holders	Must follow both the consultation and consent process set out in the regulations, and any special rules in the rule book. (The RNTBC must then act on the directions of the common law holders.)
Corporate governance	Membership model —what model of membership to adopt. <ul style="list-style-type: none"> direct (all inclusive), where all common law holders are eligible to become members of the corporation indirect (representative), where a smaller number of common law holders are appointed to represent each common law holder group 	RNTBC members Good practice is to consult common law holders because the purpose of the RNTBC is to represent them.	Special resolution of members (to approve what is written in the rule book)
Native title (high level)	Setting an alternative consultation processes for low-level native title decisions —the rule book could specify a process that differs from the process in the regulations	Common law holders	Must follow both the consultation and consent process set out in the PBC regulations and any special rules in the rule book. (The RNTBC must then act on the directions of the common law holders.)
Native title (high level)	Giving standing consent for certain native title decisions —agreeing to the RNTBC making some native title decisions without consulting common law holders for every single one	Common law holders	Must follow both the consultation and consent process set out in the PBC regulations and any special rules in the rule book. (The RNTBC must then act on the directions of the common law holders.)
Corporate governance	Membership applications —whether to accept or decline a membership application	<i>Depends on the rule book:</i> In most cases RNTBC directors decide, noting they cannot refuse an application if the person meets the eligibility criteria, but it may vary if the RNTBC has an indirect (representative) membership model	<i>Depends on the rule book:</i> Directors' resolution <i>or</i> if the RNTBC has an indirect (representative) membership model, the process set out in the rule book
Corporate governance	How to elect and appoint directors	<i>Depends on rule book:</i> Directors are elected by the RNTBC members at a general meeting. Common law holder groups and elders (even if they are not members) may decide which directors are nominated.	The process set out in the rule book which may accommodate traditional decision making by common law holder groups and elders
Corporate governance	Board composition —whether the board is structured to: <ul style="list-style-type: none"> represent all common law holders and groups reflect diversity of age, gender etc provide independent perspectives include particular expertise, such as legal, financial management or specific to an industry. 	RNTBC members Good practice is to consult with all common law holders because the purpose of the RNTBC is to represent them.	Special resolution of members (to approve what is written in the rule book)
Corporate governance	Appointing a CEO	RNTBC directors	Directors' decision-making process set out in the rule book
Operational	Appointing other staff	CEO (under a delegation from the RNTBC directors)	Managers' decision-making process in line with policies and budgets as set by the RNTBC directors
Relating to native title	Make a compensation application to the Federal Court	Common law holders	Directors' decision-making process set out in the RNTBC's rule book—check for specific processes involving consultation
Native title (high level)	Enter into an ILUA	Common law holders—noting that the RNTBC directors may sign the ILUA on behalf of the native title holders after the decision is made.	Must follow both the consultation and consent process set out in the PBC regulations and any special rules in the RNTBC's rule book

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Decision making in registered native title bodies corporate (RNTBCs)

Aboriginal and Torres Strait Islander corporations who are registered native title bodies corporate (RNTBCs) are required to make many types of decisions. Some decisions might be related to native title, others may relate to other day-to-day corporate operations and requirements under other laws. It's important to make sure decisions are made the right way, by the right people.

Important differences

To understand why there are different processes for making decisions you need to understand some differences...

..between common law holders and RNTBC members

Common law holders

are the people identified in a determination of native title as the native title holders. A native title determination may identify individual native title holders, although often the determination identifies native title holders in broad terms by referring to their descent from specific ancestors, or as members of a particular tribe, clan or family, or a language or other group.

RNTBC members

are the people who have applied to become a member of the corporation—following the process in its rule book—had their application approved by the directors and their name added to the register of members kept by the corporation.

People identified as a common law holder in the determination do not automatically become a member of the RNTBC for the determination. Some common law holders may not be members of the RNTBC.

A common law holder's native title rights and interests are no less important if they are not a member of the RNTBC. The person has the same say about native title decisions and compensation applications as a common law holder who is also a member of the corporation.

...between native title decisions and corporate decisions

Native title decisions and compensation applications

An important part of an RNTBC's job is making decisions about native title.

To make a **native title decision** or **decision to apply for compensation** for acts that have affected common law holders' native title rights and interests, an RNTBC must consult with and gain the consent of the common law holders whose rights and interests may be or have been affected. The RNTBC must make these decisions according to the wishes or directions of the common law holders who give consent for their native title rights and interests to be affected.

The Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations) set out the way that an RNTBC must consult with the common law holders. The RNTBC has to produce a certificate of the consultation to prove that the right process was followed.

For **native title decisions and compensation applications** the RNTBC directors are accountable to all of the common law holders, including those who are not members of the RNTBC.

Corporate decisions

RNTBCs also, like every other corporation, make **decisions about the corporation** such as its strategic direction, budget, risk and operations (e.g. entering a lease for an office building or to employ staff). An RNTBC that fulfils a range of objectives (e.g. delivering community services or running businesses) will make lots of these types of decisions.

The RNTBC's directors make these decisions (or delegate the decision to staff) in line with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) and the RNTBC's rule book.

The directors are accountable to the corporation and its members. Members can ask about the corporation's operations and financial management, and make decisions about appointing the directors and their remuneration (if any), selecting the auditor, setting corporation rules etc.



Types of decisions in registered native title bodies corporate (RNTBCs)

Who makes them and how

Types of decisions	Native title decisions	Compensation claims	Decisions related to native title	Other decisions
Examples of what the decisions may be about	<p>Surrender native title rights and interests</p> <p>Enter into:</p> <ul style="list-style-type: none"> an Indigenous land use agreement (ILUA) or a right to negotiate (section 31) agreement <p>Allow a person who is not a common law holder to become a member of the RNTBC</p> <p>Consent to alternative consultation processes in the RNTBC's rule book</p> <p>Other decisions affecting native title rights and interests (except for making a compensation application) (low-level)</p> <p><small>^ These decisions are listed in regulation 3(1) of the regulations.</small></p>	<p>Make a claim for compensation over land or waters covered by a determination that the RNTBC holds or manages on behalf of common law holders^A</p>	<p>Apply to revoke (cancel) or vary an existing native title determination</p> <p>Invest native title money held in trust as directed by common law holders</p> <p>\$</p> <p>Exercise a right to comment for a future act</p>	<p>Matters dealing with the day-to-day operation of the RNTBC</p> <p>Rule book (internal governance rules) including dispute resolution processes*</p> <p>Further detail on internal governance e.g. delegations, policies and procedures</p> <p>Setting strategic direction</p> <p>Calling and conducting directors' meetings and general meetings</p> <p>Sourcing, allocating, monitoring and reporting on RNTBC resources (human and financial)</p> <p>Approving reports e.g. corporate, tax, charity, funding acquittal, industry</p> <p>Membership applications</p> <p>Land outside the native title determination (e.g. freehold land) such as sale and usage of the land, welcome to country, cultural heritage inspection, joint management committee for a national park</p> <p>Programs and services</p>
Who decides	<p>Common law holders relevant to the affected native title area</p>	<p>Common law holders whose native title rights and interests will be or have been affected</p>	<p>RNTBC directors unless rule book requires consent of common law holders</p> <p>(It's good practice to consult and involve common law holders in these decisions, even if the rule book doesn't require it)</p>	<p>RNTBC directors or their delegates</p> <p>*Members must agree on the rule book, usually at a general meeting</p> <p>Although these are corporate decisions, there may be decisions for which it is a good idea to consult common law holders or it's required in the rule book.</p>
How the decision is made	<p>Consultation and consent requirements of the regulations (8 and 8A)—or for low-level decisions an alternative process in the rule book or a standing authorisation.</p>	<p>Consultation and consent requirements of the regulations (8B).</p>	<p>Usually at a directors' meeting but they can be decided through circulating resolutions outside meetings.</p>	<p>Usually at a directors' meeting but they can be decided through circulating resolutions outside meetings.</p>
Governing documents	<p>Native Title (PBC) Regulations 1999</p> <p>Rule book</p> <p>Standing authorisation</p>	<p>Native Title (PBC) Regulations 1999</p>	<p>Rule book</p> <p>State/territory laws relevant to land management type activities</p>	<p>Rule book</p> <p>Commonwealth/state/territory laws relevant to activities</p> <p>RNTBC policies and procedures</p> <p>Trust deeds</p> <p>Funding and contractual arrangements</p>
To whom are the RNTBC directors accountable	<p>All common law holders whose land or waters are affected, including those who are not RNTBC members</p> <p>RNTBC must issue a certificate for each native title decision made</p>	<p>All common law holders whose land or waters are affected, including those who are not RNTBC members</p> <p>RNTBC must issue a certificate for each decision to apply for compensation</p>	<p>All common law holders, and to the RNTBC and its members</p>	<p>The RNTBC and its members</p>

\$ Native title money and trusts

A trust is a legal relationship in which a trustee (a person or organisation) holds money or other assets for the benefit of others (beneficiaries).

It can be difficult to get information about trusts, which means the general public may not know about the trust and what the trustees are doing.

The arrangements of a trust relationship are often set out in a formal document (trust deed). The trust deed may include rules how the money and assets must be held and how they must be looked after by the trustee and how they may be used.

Sometimes, a trust is created to receive money that is paid because a company or government has made an agreement with the RNTBC to do something that affects common law holders' native title rights and interests. In this case, the trustee may be the RNTBC or another organisation. The trustee manages the money and assets held by the trust for the benefit of the beneficiaries, who are usually the common law holders whose native title rights and interests are affected by the agreement.

For example, an ILUA may require that the company or government that affects the common law holders' native title rights and interests for the benefit of native title holders be held pay money to a specified trust for the benefit of those common law holders.

Sometimes trusts are created to handle money for agreements made before native title is determined and a RNTBC is established.

Using a separate trust may provide different or stronger controls and accountability. It may also reduce taxes to be paid on trust benefits.

If native title money or assets are held and managed by a trust, then everyone involved in the arrangement needs to understand:

- the ways that money flows into and out of the trust, and any rules about it
- how trustees make decisions about managing and using/distributing the money
- how to access information about trust activity and performance.

Responsibilities

The trustee has lots of legal duties, including to:

- keep records tracking all the money and assets
- manage the trust's tax (register the trust in the tax system, lodge trust tax returns, pay relevant tax liabilities)
- distribute benefits to the beneficiaries
- ensure native title law holders are consulted as appropriate.

Trustees are accountable to the beneficiaries for all activities of the trust, as well as its compliance and performance, and the must follow any rules in the trust deed.

Beneficiaries are responsible for including their share of the trust's income in their tax return. They might need to pay tax on that income.

Who makes decisions?

In a trust established for native title money, the trustee is responsible for managing the fund and making decisions in line with the rules of the trust deed. A trust deed may require a trustee to consult with common law holders or set up an advisory group to help them make decisions. A trustee may also choose to consult the common law holders or an advisory group.

A trustee can only be replaced by following processes set out in the trust deed or by a court.



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NOTE: This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act, native title laws or consult a lawyer.