

# NATIVE TITLE STORY

## INTRODUCTION TO NATIVE TITLE AND PRESCRIBED BODY CORPORATES



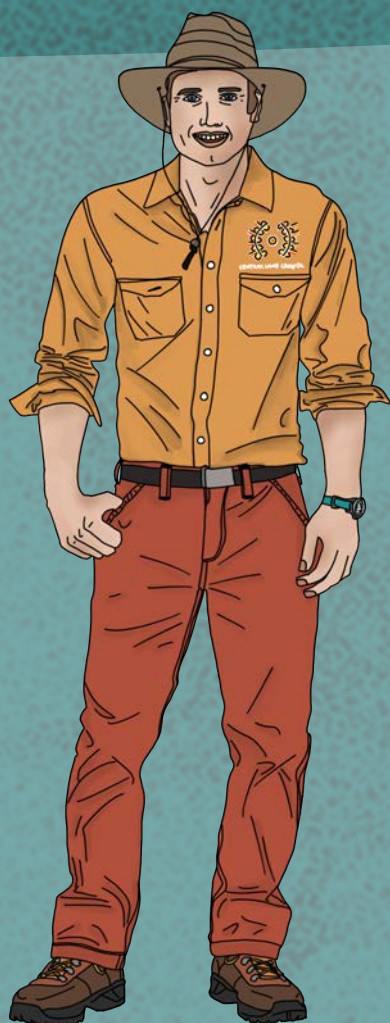


# CAN YOU TELL ME ABOUT NATIVE TITLE?



## WHAT IS NATIVE TITLE?

Native title makes sure that whitefella law recognises that Aboriginal people are still here. That we have traditional law and connection to country.



## HOW DO WE GET NATIVE TITLE?

People have to put in a native title claim. They have to prove to the Federal Court that they still have connection to their country Aboriginal law way.

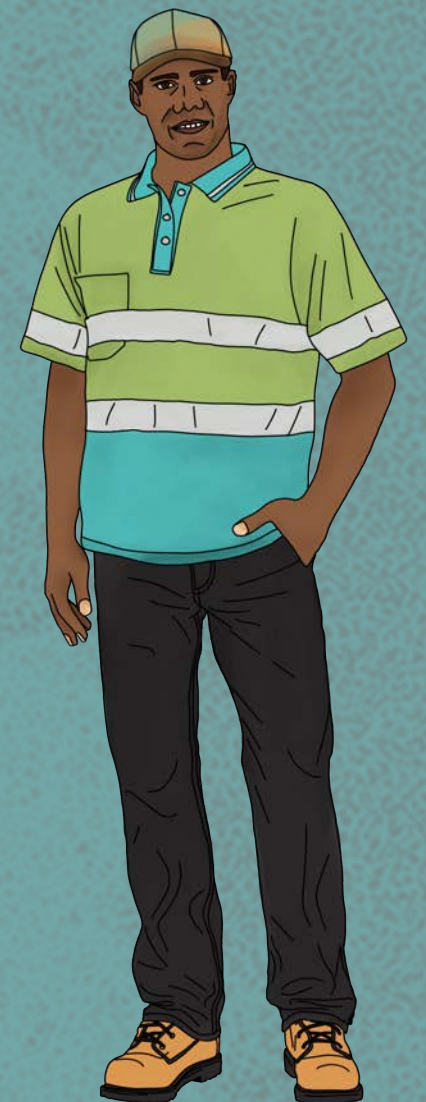






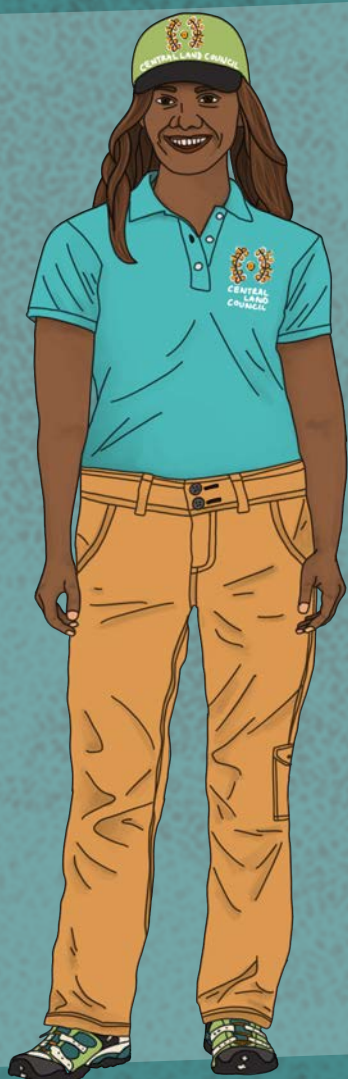
## WHAT CAN WE DO WITH NATIVE TITLE?

We can hold ceremonies, look after sacred sites, get bush tucker, hunt and camp on our country. When the government or a mining company wants to do something on that land, they have to talk to the right traditional owners.



## DO WE OWN COUNTRY WITH NATIVE TITLE?

No. In the Northern Territory most of the native title land is leased by a pastoralist or owned by the government.





# WHAT HAPPENED TO MAKE THE ABORIGINAL LAND RIGHTS AND NATIVE TITLE ACTS?

## ABORIGINAL LAND RIGHTS

## NATIVE TITLE

**1963**

The Yolngu people of Yirrkala sent a bark petition to the Australian government to protest against a mining lease on their mission reserve.

**1966**

The Gurindji people walked off Wave Hill station because of the bad living conditions and low pay. They started fighting the Australian government for a place to live on their own country.

**1973**

Prime Minister Gough Whitlam asked Judge Edward Woodward to find a way to recognise Aboriginal rights to land in the Northern Territory.

**1976**

Prime Minister Malcolm Fraser made the Aboriginal Land Rights Act.

**1976-1997**

Aboriginal land claim time

**1982**

Eddie Koiki Mabo and 4 other Meriam men from the island of Mer (Murray Island) in the Torres Strait asked for recognition of traditional ownership of their land. They went to the High Court to argue that the *Terra Nullius* law from England was wrong.

**1992**

The High Court decided that *Terra Nullius* was wrong. Mabo changed the Australian law so that traditional ownership of land could be recognised.

**1997**

The Land Rights Act changed (Sunset Clause) and now Aboriginal people cannot make new Land Rights claims. The Land Rights Act is still around for people who already have Aboriginal Freehold land.

**1996**

The Wik people of Cape York went to the High Court to argue that their native title rights were still there on a pastoral lease. The High Court said that native title rights and the rights of the pastoralist can be recognised on a pastoral lease at the same time.

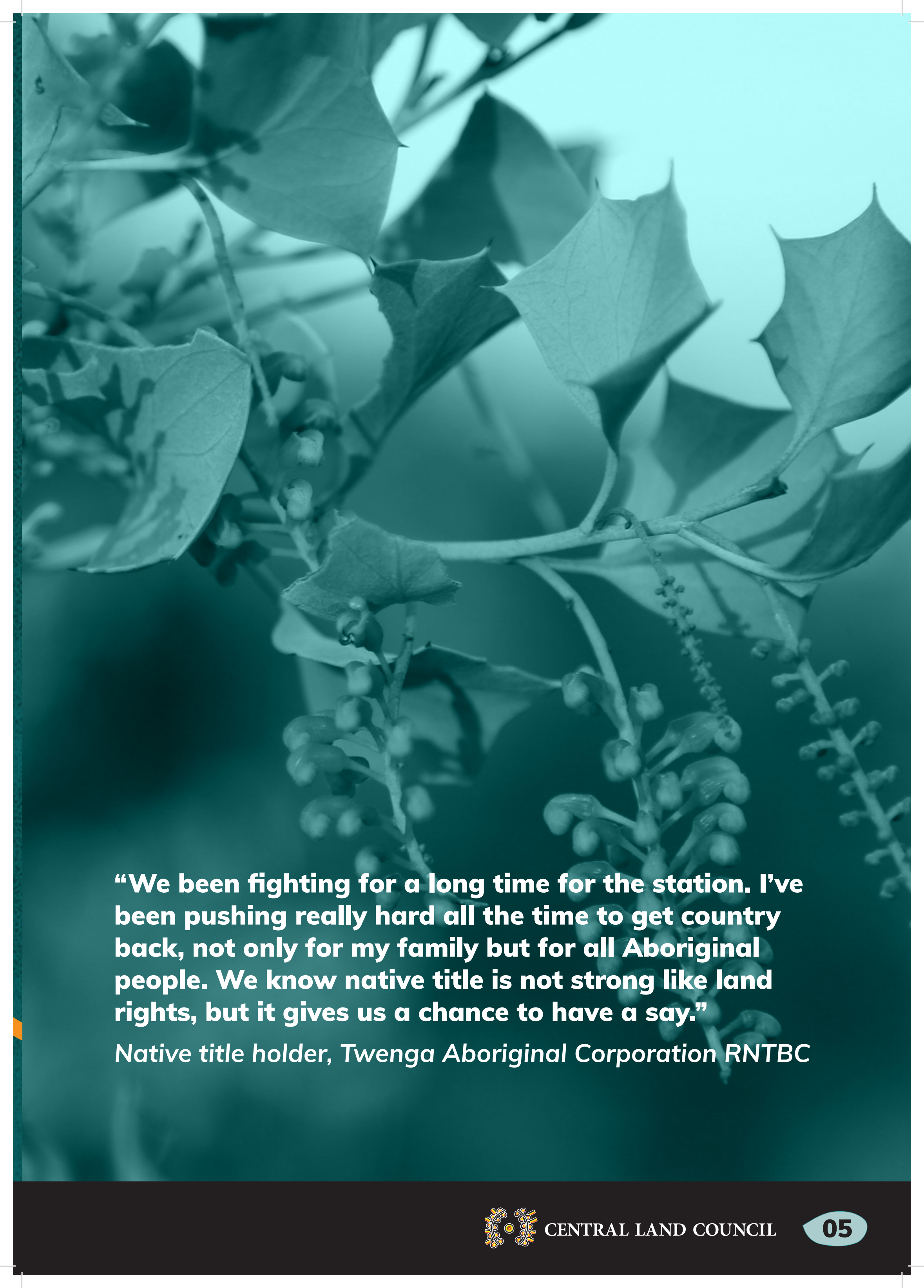
**1998**

The Native Title Act changed so that native title can be recognised on pastoral leases.

**1993**

The Australian government had to accept the Mabo High Court decision and made the Native Title Act. The Native Title Act makes the rules for recognising traditional law and connection to country.





**“We been fighting for a long time for the station. I’ve been pushing really hard all the time to get country back, not only for my family but for all Aboriginal people. We know native title is not strong like land rights, but it gives us a chance to have a say.”**

*Native title holder, Twenga Aboriginal Corporation RNTBC*





# HOW IS THE ABORIGINAL LAND RIGHTS ACT DIFFERENT TO THE NATIVE TITLE ACT?

## WHO OWNS THE LAND?



### ABORIGINAL LAND RIGHTS ACT

The Aboriginal Land Rights Act helped Aboriginal people in the Northern Territory to get their land back. This land is called Aboriginal freehold land.

Freehold is the strongest land title in Australian law.

Traditional Owners of the land own and control their land. They can say “no” to activities on their land.

### NATIVE TITLE ACT

The Native Title Act recognises some traditional rights to country.

The Native Title Act is for all across Australia.

Native title holders do not own the land under Australian law. They cannot say “no” to activities on the land. They can try to make agreements.

Native title holders cannot stop station owners from running cattle stations.



## WHAT CAN BE CLAIMED?

### ABORIGINAL LAND RIGHTS ACT

Most of the country handed back was vacant crown land out bush, stock routes and stock reserves, and Aboriginal owned cattle stations.

### NATIVE TITLE ACT

There can be native title on pastoral leases, government land or even in some towns.

There is no native title on freehold land under Australian law.





## WHO LOOKS AFTER THE TITLE?

### ABORIGINAL LAND RIGHTS ACT

Aboriginal freehold land is held by Aboriginal Land Trusts.

Land councils manage Aboriginal Land Trusts.

### NATIVE TITLE ACT

Native title holders need to have a corporation. This is called a prescribed body corporate, or PBC.

Land councils help manage PBCs.

## HOW ARE DECISIONS MADE?

### ABORIGINAL LAND RIGHTS ACT

Traditional Owners decide what happens on Aboriginal land.

Traditional Owners make decisions the traditional law way.

Land councils meet with Traditional Owners and record their decisions.

Land councils have to make sure decisions are made the right way.

If the Traditional Owners say “yes” to an agreement, the Land Trust members sign the agreement.

### NATIVE TITLE ACT

The directors and members of the PBC make decisions about the PBC.

Affected native title holders are the owners of the country under Aboriginal law. They can talk and make decisions about what happens on their country.

PBC directors ask the affected native title holders what they want to do and if they want to sign an agreement.

PBC directors only sign a native title agreement after the affected native title holders have agreed.

The PBC can ask land councils for help.





# NATIVE TITLE RIGHTS



## YOUR NATIVE TITLE RIGHT



**Go on country**



**Camp on country**



**Get water from soakage, waterholes, and rivers**



**Make a campfire**



**Talk about a project and try to make an agreement**



**Hunt and fish native animals**



**Get bush tucker, wood, ochre and other natural resources**



**Look after and protect sacred sites and important places**



**Teach, hold meetings and ceremonies on country**



**Say how other Aboriginal people can use your country**



**Take anyone on your country to help you with cultural activities and research**



## CAN YOU TELL ME ABOUT NATIVE TITLE RIGHTS?

Your native title determination says which native title rights you have. Here are some native title rights most native title holders have.



## NOT YOUR NATIVE TITLE RIGHT



**Stop people coming on your country**



**Build houses or make new outstations**



**Get water from bores or dams**



**Light fires to clear country or hunt**



**You cannot say "no" to stop a project**



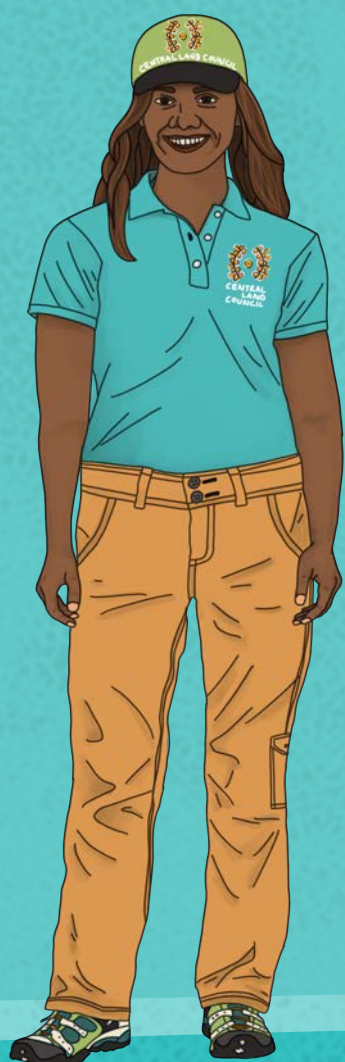


# TELL ME MORE ABOUT A PBC?



## WHAT IS A PBC?

After the Federal Court agrees to a native title claim, the native title holders need to have an Aboriginal corporation. This is called a prescribed body corporate, or PBC.



## WHO RUNS THE PBC?

A PBC belongs to the native title holders. It is the job of the members and directors to run the PBC. The members and directors have to follow the PBC rule book.





# THE PBC NEEDS TO WORK TRADITIONAL LAW WAY AND AUSTRALIAN LAW WAY

**Aboriginal  
law and  
culture**



**Corporation law  
Native title law  
PBC law**



# WHAT DOES A PBC DO?

A PBC has a number of jobs. The main job of a PBC is to help native title holders talk with people who want to do something in the native title area.



**NATIVE  
TITLE  
HOLDERS  
UNDER  
TRADITIONAL  
LAW**

**GOVERNMENT  
AND FUNDING  
BODIES**



**LAWYERS  
AND  
BOOKKEEPERS**



**APPLICANTS**  
for example,  
a mining  
company



**CENTRAL  
LAND  
COUNCIL**

**ORIC**



Australian Government  
Office of the Registrar of  
Indigenous Corporations



**CENTRAL LAND COUNCIL**



# WHAT CAN MEMBERS, DIRECTORS AND AFFECTED NATIVE TITLE HOLDERS DO?



## I AM A PBC MEMBER

**I have to follow the PBC rule book.**

**I can:**

- Go to the **annual general meetings (AGMs)**
- Choose **directors** and vote for them at the AGMs
- Become a director
- Ask directors to arrange a meeting
- Ask the directors questions at meetings
- Go to other meetings of the PBC
- Help make decisions at meetings
- Ask to make changes to the **rule book**
- Look at **minutes**, financial reports (money story) and auditor reports and ask questions
- Check if my name, phone number and address in the PBC **member register** are right
- Ask other **native title holders** to become **members**
- Be involved in what is happening in the native title area
- Sign a **certificate of consultation and consent** for agreements about country – but only if the PBC has spoken to the **affected native title holders** and the right people made the decision
- Find out what the PBC is doing and look at the **development plan** and share my ideas





# I AM A PBC DIRECTOR

**I have to be a member and follow the PBC rule book.**

**I have to:**

- Make decisions that help everyone
- Organise and go to **directors meetings**, general meetings, and **annual general meetings (AGMs)** or help the CLC with organising the meetings
- Check if the meeting **minutes** and reports are true and speak up if they are not true
- Help to make the **development plan**
- Check the new membership applications
- Tell other directors when I have a **conflict of interest**
- Know what my PBC is doing and ask questions so that I understand
- Make sure that the bills are paid
- Check if the financial reports (money story) are straight and ask questions
- Employ a PBC manager and make sure they do a good job
- Talk with **parties** who want to do something in the native title area
- Sign native title agreements when **affected native title holders** agree and PBC **members** have signed the **certificate of consultation and consent**

# I AM AN AFFECTED NATIVE TITLE HOLDER

**I can:**

- Become a **member** of the PBC
- Go to meetings to talk about my country
- Tell other **affected native title holders** about meetings
- Talk up and ask questions about what is happening on my country
- Make decisions about my country that will work for all affected native title holders
- Tell PBC members to sign the **certificate of consultation and consent** for agreements about my country



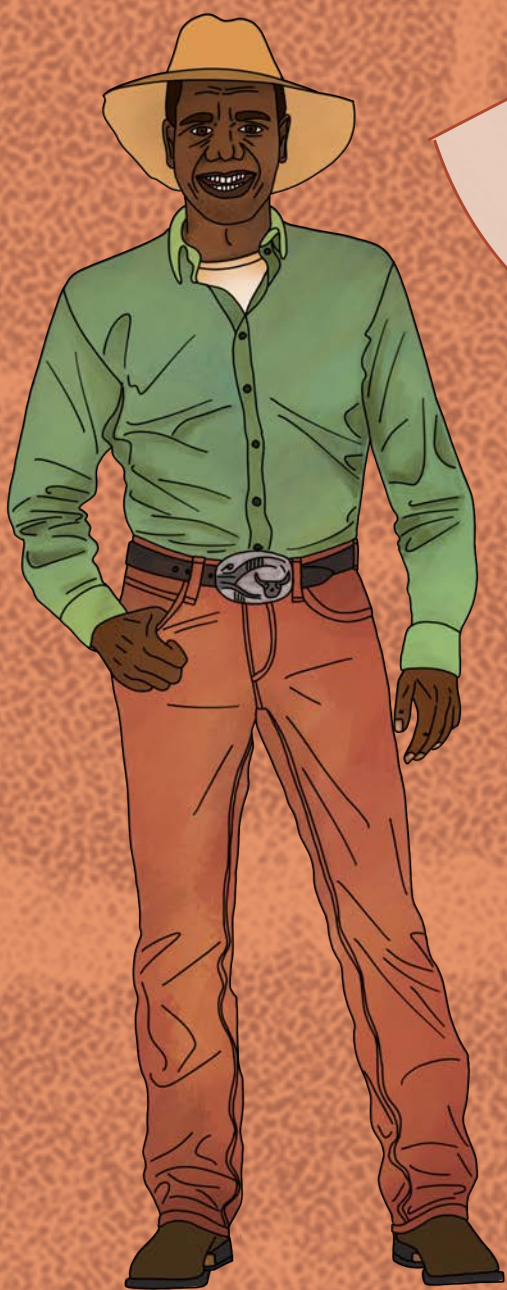


# WHAT KIND OF DECISIONS ARE MADE IN A NATIVE TITLE AREA?

## DIFFERENT KIND OF DECISIONS

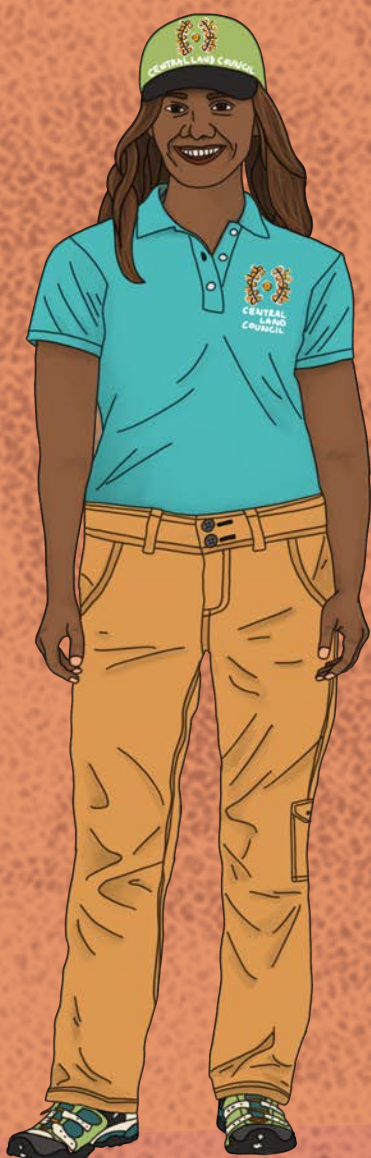
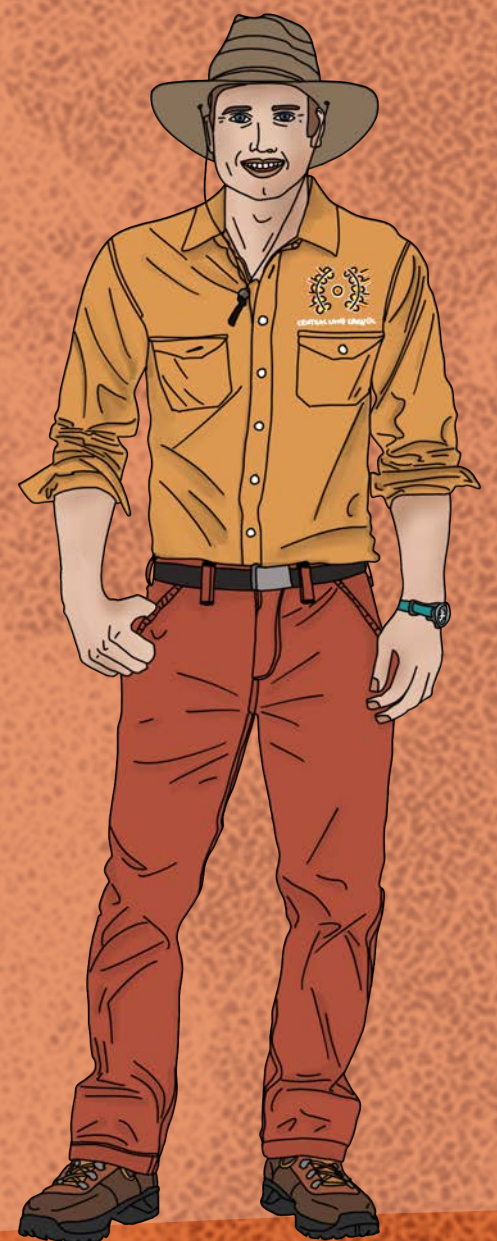
WHAT IS THE DECISION ABOUT?	USING LAND THAT <b>WILL</b> AFFECT NATIVE TITLE RIGHTS	USING LAND THAT <b>DOES NOT</b> AFFECT NATIVE TITLE RIGHTS	THE CORPORATION AND HOW THE PBC IS MANAGED
WHO MAKES THE DECISION?	<ul style="list-style-type: none"> <li>• Mining and look around (exploration) agreements.</li> <li>• New roads and other government infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>• When someone wants to do something in the native title area and they contact the PBC. For example, a pastoralist or researcher. But they do not have to contact the PBC.</li> </ul>	<ul style="list-style-type: none"> <li>• Holding corporation meetings. For example, directors meetings and AGMs.</li> <li>• PBC development and business opportunities.</li> <li>• Managing money and staff.</li> </ul>
HOW IS THE DECISION MADE?	<ul style="list-style-type: none"> <li>• The PBC talks to the affected native title holders.</li> <li>• The PBC can help talk with parties.</li> <li>• Affected native title holders can make decisions the traditional law way.</li> <li>• The PBC does what the affected native title holders say.</li> </ul>	<ul style="list-style-type: none"> <li>• The PBC talks to the affected native title holders.</li> <li>• The PBC can help talk with parties.</li> <li>• Affected native title holders can make decisions the traditional law way.</li> </ul>	<ul style="list-style-type: none"> <li>• The PBC directors and members have to follow the PBC rule book and make decisions that help everyone.</li> </ul>





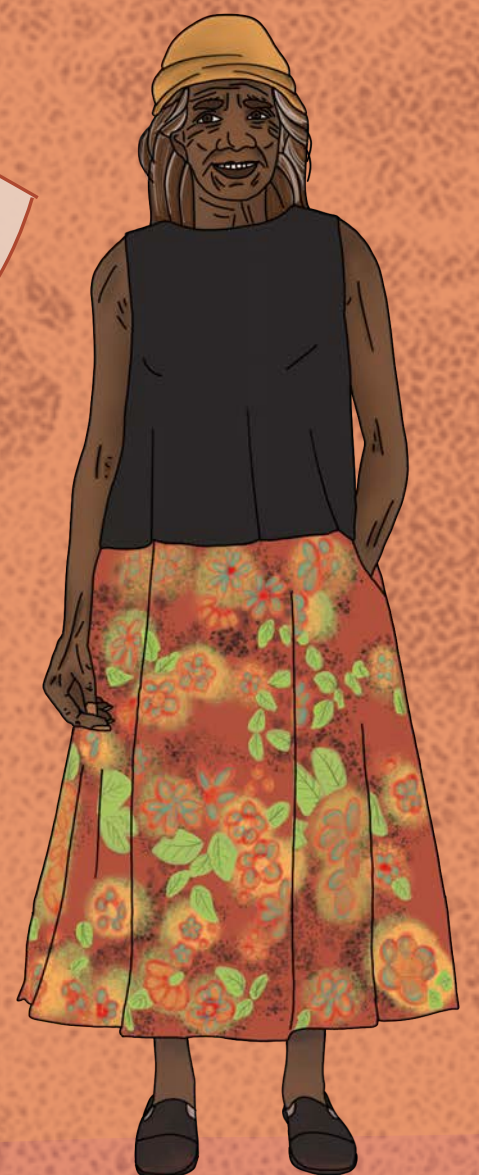
**DO I TALK TO THE PBC  
WHEN I WANT TO GO  
ON MY COUNTRY?**

**No.** When you go hunting, camping or visiting a sacred site on your country, you do not have to ask the PBC.



**CAN A PBC DO  
WORK THAT IS  
NOT NATIVE TITLE?**

**Yes.** The PBC can run businesses, deliver services and talk to government and other people about things the native title holders want to do. These ideas can be put in the development plan.





# AFTER A NATIVE TITLE DETERMINATION, WHAT HAPPENS WHEN SOMEONE WANTS TO DO SOMETHING ON THE NATIVE TITLE LAND?

## WHITEFELLA LAW

### 1 APPLICATION

A company asks the government for permission to do something on native title land

### 2 NOTIFICATION

Government sends a notice to the PBC about the application

### 3 INFORMATION

PBC asks the company for more information about the plan

### 5 CERTIFICATION

PBC has to tell the CLC about the plan and the CLC signs the certificate of consultation

## PBC



### 4 CONSULTATION

PBC meets with the affected native title holders about the plan

### 6 NEGOTIATION

PBC talks with the company and affected native title holders about an agreement

### 7 INSTRUCTIONS

Affected native title holders tell the PBC what to do about the agreement

### 8 CONSENT

If the affected native title holders say "yes" to the agreement they sign the certificate of consultation and consent

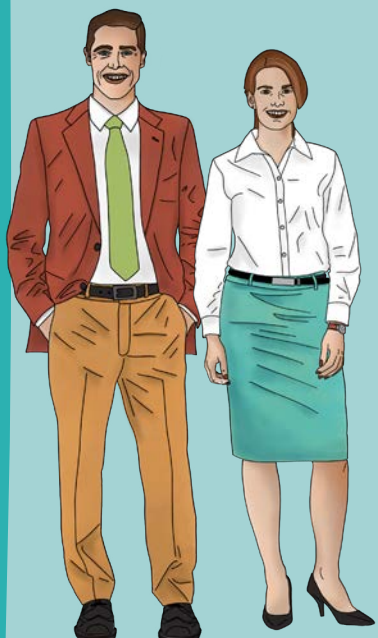
### 9 SIGN AGREEMENT

PBC directors and the company sign the agreement

### 10 MONITORING

PBC checks that everyone does what they have agreed to do

The PBC can ask the CLC for help and advice





**“Our children will rise up and they will continue to stand up for their rights, as we are standing. Also, remembering our poor old people. Remembering all our people – from north, east and west.”**

*Native title holder, Kaytetye Alyawarr Awenyerraperte  
Ingkerr-wenh Aboriginal Corporation RNTBC*





# HOW DOES THE CLC HELP WITH NATIVE TITLE BUSINESS?

## BEFORE NATIVE TITLE CLAIM

The CLC has to help Aboriginal people who have country on pastoral leases or other government land.



native title holders



CENTRAL  
LAND  
COUNCIL



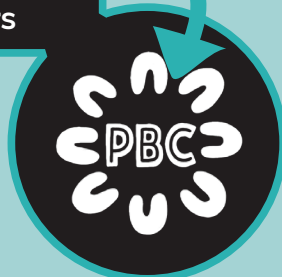
mining companies,  
government and  
other parties

## AFTER NATIVE TITLE DETERMINATION

Native title holders must have a corporation. This is called a prescribed body corporate, or PBC. The main job of the PBC is to help native title holders talk with people who want to do something in the native title area.



native title holders



mining companies,  
government, Office of the  
Registrar of Indigenous  
Corporations (ORIC), lawyers,  
anthropologists, and other  
parties

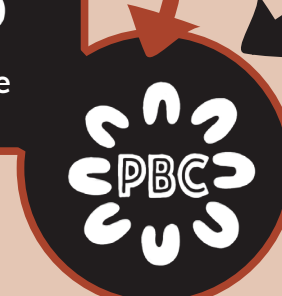
The PBC can ask the CLC for help.

## WHEN THE PBC HAS A SERVICE AGREEMENT WITH THE CLC

The CLC can help the PBC talk with people who want to do something in the native title area.



native title holders



CENTRAL  
LAND  
COUNCIL



mining companies,  
government, Office of the  
Registrar of Indigenous  
Corporations (ORIC) and other  
parties



# THE CLC CAN HELP THE PBC WHEN THERE IS A SERVICE AGREEMENT



- Can ask the CLC to help with native title business and running the PBC
- Has to let the CLC know if the PBC is in trouble or in court
- Has to keep information to do with the CLC private
- Can stop the Service Agreement if it gives 30 days notice



## CENTRAL LAND COUNCIL

- Has to follow the same rules and laws that the PBC has to follow
- Can help the PBC members and directors do their job – CLC will not do it for them
- Helps the members and directors with native title business and running the PBC
- Needs to talk with native title holders who have to make decisions
- Can try to get money to help the PBC
- Cannot help with bookkeeping, accounting or tax
- Has to keep information to do with the PBC private
- Can stop the Service Agreement if it gives 30 days notice





# HARD ENGLISH WORDS AND MEANINGS



**word** is in the list

## AFFECTED NATIVE TITLE HOLDERS

They are the **native title holders** affected by a project. When a mining company or government want to do something in the native title area, it could change what **native title holders** can do on that country. For example, a mine could stop traditional owners from hunting on the mine area. The traditional owners of that country under Aboriginal law are called affected native title holders.

## ANNUAL GENERAL MEETING (AGM)

A meeting the **PBC** has once a year with all the **members**. At this meeting, the **directors** have to tell the **members** what the corporation has been doing and talk about the money story. **Members** also choose **directors** for the **PBC**. The **rule book** says when and how to run the AGM.

## CATSI ACT

The Corporations Aboriginal and Torres Strait Islander Act (CATSI Act) is the law about how to set up and run an Aboriginal corporation. A **PBC** is an Aboriginal corporation.

## CERTIFICATE OF CONSULTATION AND CONSENT

It is a certificate that shows the **PBC** has talked to the right people, given them the right information, and how the decision was made.

For example, when a mining company or government want to do something in the native title area and the **affected native title holders** say “yes” to an agreement, they have to sign a paper called certificate of consultation and consent. This certificate is proof that the **PBC** has talked to the right **native title holders** and that they want the agreement.

The certificate has to be signed by 5 or more **affected native title holders** who are also **members** of the **PBC**. If there are not enough **affected native title holder members**, then other **members** of the **PBC** also have to sign. The **PBC** cannot make a native title agreement without the certificate of consultation and consent.



## CONFLICT OF INTEREST

A conflict of interest is when a **director** can get something for themselves or their family when they make a decision as a **director** of the **PBC**.

For example, the **PBC** has a car for sale. It is the job of the **PBC directors** to sell the car. One of the **PBC directors** wants to buy the car. This is a conflict of interest. The **director** has to tell the other **directors** at a meeting about the conflict of interest. Then, the **director** should walk away from the meeting and let the other **directors** decide who can buy the car.

## DEVELOPMENT PLAN

This is a plan about what the **PBC** wants to do. **PBC members** and **directors** make a list of ideas and jobs that the **PBC** could do. These ideas are put into a development plan to help everyone stay on track. A development plan helps a corporation to show what work it wants to do, why it wants to do that work, and how it will do that work.

## DIRECTOR

A person who is a **member** of the corporation and has been chosen by other **members** to make sure the corporation is run the proper way. The directors have to know what the corporation is doing, ask questions at **directors' meetings**, and ask for help if they cannot run the corporation by themselves.

## DIRECTORS' MEETINGS

All **directors** get together to hold meetings. At these meetings, the **directors** talk about the corporation and make decisions about how the corporation is run. Half or more of the **directors** have to be at the directors' meetings to make decisions.

## GOVERNANCE

Governance is about how to run the corporation the proper way. It is about how to follow the rules and laws when doing corporation business. Good governance helps the people who are responsible for what happens to make good and fair decisions.





## MEMBER

A member is someone who belongs to a corporation. There are rules in the **rule book** about who can be a member. When a person wants to be a member they have to fill in a membership application. At the **directors' meeting**, the **directors** check the **rule book** to make sure that person can become a member.

## MEMBER REGISTER

A member register is a list with the name, phone number and address of every **member** of the corporation. The member register also shows when someone started and stopped being a **member**.

## MINUTES

Minutes are proof that show who was at the meeting, what was talked about and what decisions were made. The minutes are checked at the next meeting to make sure they are true. The corporation has to keep minutes to show what decisions were made and who made the decisions.

## NATIVE TITLE DETERMINATION

A judge from the Federal Court makes a decision about a native title claim. When all **parties** agree about native title, then the court can make a consent determination.

## NATIVE TITLE HOLDER

A person who is connected to their traditional country under their traditional law. A person who is part of a group that has native title rights on native title land.

## ORIC

The Office of the Registrar of Indigenous Corporations (ORIC) is the organisation that makes sure Aboriginal corporations follow the rules in the **CATSI Act**.





## PARTIES

A party is a person, group, organisation, government or company that has an interest in what is being talked about, or in the land where something is happening. For example, the **PBC**, a mining company and the government can all be parties to a mining agreement.

## PRESCRIBED BODY CORPORATE (PBC)

After a **native title determination**, the **native title holders** need to have an Aboriginal corporation to look after native title on their country. This is called a prescribed body corporate, or PBC. The PBC needs to follow traditional law and Australian law. A PBC is also called a Registered Native Title Body Corporate (RNTBC).

## PBC REGULATIONS

The Australian Government made special rules for **PBCs**. They are called Native Title (Prescribed Bodies Corporate) Regulations, or PBC regulations. These rules tell a **PBC** that it has to talk to **affected native title holders** and that the **PBC directors** can only sign an agreement when the **affected native title holders** say “yes” to the agreement.

## RULE BOOK

The rule book tells the corporation what it can do, who can be a **member**, and how **members** and **directors** have to run the corporation. All corporations need to have a rule book. Sometimes the rule book is also called a constitution.







**CENTRAL  
LAND  
COUNCIL**

## **Central Land Council**

**PBC Support Unit**

27 Stuart Highway, Alice Springs NT 0870

PO Box 3321, Alice Springs NT 0871

**T** 08 8951 0515

**CLC Reception** 08 8951 6211

**E** [corporations@clc.org.au](mailto:corporations@clc.org.au)

**[clc.org.au](http://clc.org.au)**

## **Office of the Registrar of Indigenous Corporations (ORIC)**

**[oric.gov.au](http://oric.gov.au)**

## **National PBC Website**

Managed by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

**[nativetitle.org.au](http://nativetitle.org.au)**