

# NATIVE TITLE STORY

**Introduction to native title and  
prescribed bodies corporate**



July 2019



Kimberley Land Council

# 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. This means recognition under whitefella law that we are the traditional owners of our country.

## How do we get native title?

People have to make a claim for native title in the Federal Court. They have to prove to the Federal Court that they still have connection to their country by their traditional laws.



## What can we do with native title?

You can do the things that are recognised in your native title determination from the Federal Court. This might be things like holding ceremonies, looking after sacred sites, getting bush tucker and hunting and camping on your country. All the things you could do on your country under traditional law and custom that can be recognised under whitefella law. When people like the government or a mining company want to do something on your country, they might have to talk to you.



## Do we own country with native title?

Native title recognises traditional ownership rights in country. This means that group or community own the native title together. There's 2 types of native title - exclusive and non-exclusive. Exclusive native title is closest to owning land under whitefella law, but it's not the same. Your native title determination tells you what type of native title you have and how it fits with other people's interests in your country (e.g. pastoralists, mining companies, government).

# HOW DID NATIVE TITLE HAPPEN?

**1975**

The Australian government made the Racial Discrimination Act. This is the way native title holders get compensation for things the government did that discriminate against native title holders. You can't get compensation for things done by the government before 31 October 1975 (the date the Racial Discrimination Act was passed).

**1992**

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

**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.

**2005**

The Australian government made the CATSI Act. The CATSI Act has the rules that native title corporations (prescribed bodies corporate or PBCs) have to follow.

**1788**

On 26 January 1788 Captain Phillip established Sydney as an English colony because Captain Cook had declared Australia 'Terra Nullius' (land belonging to no one).

**1982**

Eddie Koiki Mabo and 4 other Meriam men from the island of Mer 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.

**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 and makes the rules for corporations to look after native title (prescribed bodies corporate or PBCs).

**1998**

The Native Title Act changed to add more rules about "future acts".

***“We will continue to protect and defend our country and our connection to it. Our plan is to establish corporations and enterprises that will empower Kimberley Indigenous people to take control of our lives and build strong futures for our children.”***

– Anthony Watson, Native Title Holder.



# 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.**

- ✓ Do anything that you could have done under your traditional law and custom
- ✓ Go on country
- ✓ Camp on country
- ✓ Make a campfire
- ✓ Talk about a big project and try and make an agreement
- ✓ Hunt and fish on country
- ✓ Get bush tucker, wood, ochre and other natural resources
- ✓ Look after sacred sites and important places
- ✓ Teach, hold meetings and ceremonies on country

If your native title determination recognises exclusive native title, you can also stop people coming to your country.

## TELL ME MORE ABOUT PBCs

### What is a PBC?

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

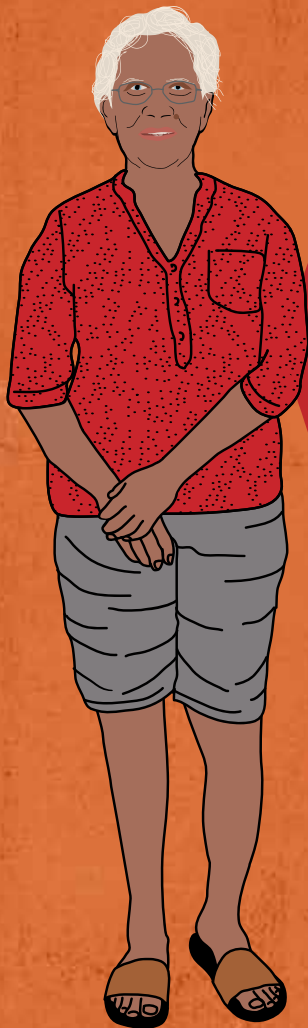
### Who runs the PBC?

A PBC belongs to the native title holders. It is the job of the members and the directors to run the PBC. The members and the directors have to follow the Rule Book and the CATSI Act. The Rule Book and CATSI Act say who can apply to become members of the PBC and who can be directors of the PBC.

### What is the main job of the PBC?

The PBC has to look after native title. 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.

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



**Aboriginal  
Law and  
Culture**

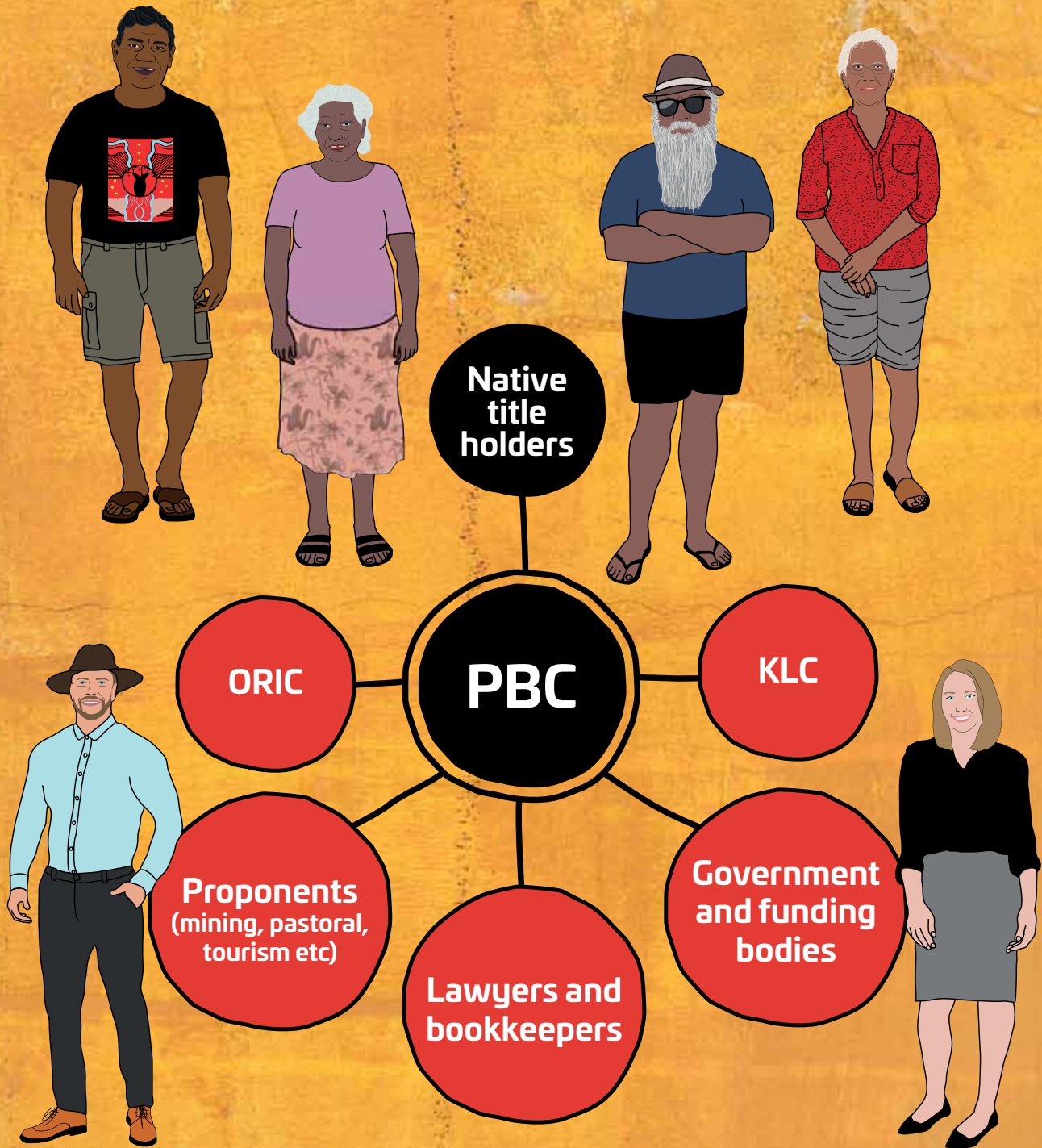
**PBC**

**Australian law  
(corporations  
law and native  
title 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.



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

## I am a native title holder:

### I can:

- Make decisions about my country
- Become a member of the PBC
- Go to meetings to talk about my country
- Tell other native title holders about meetings
- Talk up and ask questions about what's happening on my country
- Tell PBC members to sign the certificate of consultation and consent that shows I have been consulted and consent to agreements about my country

I can't go to PBC meetings if I'm not a member of the PBC.



## I am a PBC member:

### I have to follow the PBC Rule Book. I can:

- Go to members' meetings (AGMs and other general meetings)
- Chose directors and vote for them at AGMs
- Become a director
- Ask directors to arrange a members' meeting
- Ask the directors questions in members' meetings to find out what the PBC is doing and share ideas
- Help make decisions at members' meetings
- Ask to make changes to the Rule Book
- Look at the minutes of members' meetings
- Check if my name, phone number and address in the members' register is right
- Sign a certificate of consultation and consent for agreements about country – but only if the PBC has spoken to the native title holders and the right people made the decision

I can't make decisions about native title. These decisions can only be made at proper meetings of native title holders.

## **I am a PBC director:**

**I have to be a member and I have to follow the Rule Book and the CATSI Act.**

**I have to:**

- Make decisions that help all native title holders
- Organise and go to directors' meetings and members' meetings or help the land council organise the meetings
- Check if the minutes and reports of meetings are right and speak up if they aren't true
- Check new membership applications
- Tell the other directors when I have a conflict of interest
- Know what my PBC is doing and ask questions so I understand
- Make sure that the PBC bills are paid
- Check if the financial reports are straight and ask questions to understand them
- Talk with people who want to do something in the native title area
- Talk to native title holders about anything that will impact their native title rights
- Sign native title agreements when native title holders agree and PBC members have signed the certificate of consultation and consent

I can't make decisions about native title. These decisions can only be made at proper meetings of native title holders.



# HOW ARE DECISIONS MADE?

The members and directors of the PBC make decisions about the PBC, but can't make native title decisions. Even though directors and members of the PBC are also native title holders, decisions about country can only be made at proper meetings of native title holders.

Members and directors of PBCs have to be native title holders. Native title holders don't have to be members of the PBC, but the PBC still has to talk to them about their country.

The PBC can ask the KLC for help.

## What kind of decisions are made in a native title area?

### Different kind of decisions

<b>What is the decision about?</b>	<b>Native title decisions:</b> Using land that will affect native title rights <ul style="list-style-type: none"><li>• Mining agreements</li><li>• Enter into an ILUA</li><li>• Petroleum agreements</li><li>• New roads or other government infrastructure</li><li>• Access agreements (if you have exclusive native title)</li></ul>	<b>Operational decisions:</b> How the PBC is managed <ul style="list-style-type: none"><li>• Holding directors' meetings and AGMs</li><li>• PBC development and business opportunities</li><li>• Managing money</li><li>• Employing staff</li><li>• Renting office space</li></ul>
<b>Who makes the decision?</b>	Native title holders because they are the traditional owners of the country	PBC members and PBC directors because they run the PBC
<b>How is the decision made?</b>	<ul style="list-style-type: none"><li>• PBC talks to native title holders</li><li>• Native title holders can make decisions the traditional way</li><li>• The PBC does what the native title holders say</li><li>• The PBC follows the rules in the Native Title Act and the CATSI Act to put in place what the native title holders say</li></ul>	The PBC members and directors have to follow the Rule Book and the CATSI Act and make decisions that help all native title holders



**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 don't have to ask the PBC.



**Can a PBC do work  
that is not native title?**

Yes. The PBC has to make sure it does its main job first - to look after native title. The PBC also has to make sure it follows the CATSI Act. Then your PBC can run businesses, deliver services and talk to government and other people about things the native title holders want to do.

*“Native title is really important for recognition for old people but especially our young people, the future generation, so they can understand the land, the country, the people and the culture.*

*Getting native title is one of the hardest processes Aboriginal people can go through. We are starting to see progress but there’s still far more to do.”*

– Albert Cox, Nimanburr PBC.



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

For example this shows what happens when a mining company wants to have a look around country

## WHITEFELLA LAW

### 1. Application:

Mining company asks the government permission to look around (explore) on native title land.

**2. Notification:** Government sends a notice to the PBC about the application and usually says that the mining company doesn't have to talk to native title holders before the application to look around is granted.

**3. Information:** PBC gets more information about the application – where they want to look (maps), what for and how. The KLC can help with this.

**4. Consultation:** PBC talks about the application to see if it will interfere with community activities or significant sites or if it involves a big impact on country.

## PBC

## ABORIGINAL LAW



## WHITEFELLA LAW

## PBC

## ABORIGINAL LAW

**5. Objection:** If the application will interfere with community activities or significant sites or have a big impact on country, the PBC can object to the government and try and get the mining company to talk to native title holders.

**6. Evidence:** If the PBC wants the mining company to talk to native title holders, it has to prove that the application will interfere with community activities or significant sites or have a big impact on country by:

- getting evidence from native title holders; and
- writing an argument to the Native Title Tribunal (this is called contentions).

**7. Inquiry:** The Native Title Tribunal will look at the evidence and the written argument and decide if the mining company has to sit down and talk to the native title holders.

**8. Negotiation:** If the Native Title Tribunal says so, the mining company has to negotiate with the native title holders through the PBC (this is called the right to negotiate).

**9. Enter into an agreement:** If the native title holders and the mining company agree, they will enter into an agreement. This agreement usually has rules for the protection of Aboriginal cultural heritage and what the mining company can and can't do on your country.

### Do we get a right to veto development once we get native title?

Under the Native Title Act the highest procedural right native title holders have is a right to sit down at the table and negotiate in good faith with someone who wants to do something on country.



# HOW DOES THE KLC HELP WITH NATIVE TITLE BUSINESS?



## Native title claims:

The KLC has to help Aboriginal people in the Kimberley with their native title claims.

## After native title determination:

Once you have your native title determination, the KLC can help PBCs manage their business if the PBC asks the KLC to help. The KLC does not make decisions for PBCs.

The KLC can help with things like:

- Legal advice about native title and PBC rules
- Support to organise meetings like getting members and directors to PBC meetings
- Help setting up ranger groups
- Help with caring for country activities like funding agreements.

# WORDS AND MEANINGS

**Affected native title holders:** 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 are called affected native title holders under whitefella law.

**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 PBC has been doing. **Members** also chose **directors** for the **PBC**. The rule book says when and how to run the AGM.

**CATSI Act:** The Corporations (*Aboriginal and Torres Strait Island*) Act 2005 (Cth) is the law about how to set up and run an Aboriginal corporation. A **PBC** is an Aboriginal corporation.

**Certificate of consultation and consent:** This is a certificate that shows the **PBC** has talked to the right **native title holders**, given them the right information and how the decision was made. The **PBC** needs this for all **native title decisions**.

For example, when a mining company or government want to do something in the native title area and the **native title holders** say “yes” or “no” 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 are the ones who made the decision about 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** can’t make a native title decision 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 and follow the rules in the **rule book** and the **CATSI Act**.

It’s ok to have a conflict of interest. The important thing is to tell the other directors about it and follow the rules.

**Director:** A person who is a **member** of the **PBC** and was chosen by other **members** to make sure the **PBC** is run the proper way. The directors have to know what the **PBC** is doing, go to **directors' meetings**, ask questions and ask for help if they can't run the **PBC** by themselves.

**Directors' meetings:** All directors get together to hold meetings. At these meetings, the directors talk about the **PBC** and make decisions about how the **PBC** is run.

**Governance:** Governance is about how to run the **PBC** the proper way. It's about how to follow the rules and laws when doing **PBC** 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 **PBC**. 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.

**Members' register:** A members' register is a list with the name, phone number and address of every **member** of the **PBC**. The members' 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 **PBC** has to keep minutes to show what decisions were made and who made the decisions.

**National Native Title Tribunal:** The Tribunal is a government body set up by the Native Title Act to make decisions about native title. Things that the Tribunal makes decisions about include future acts like exploration agreements.

**Native title decision:** A decision that will impact native title rights and interests. For example, a decision to agree to extinguish native title, a decision to agree to the grant of a lease over native title land or a decision to enter into an Indigenous Land Use Agreement.

**Native title determination:** A judge from the Federal Court makes a decision which recognises native title as property rights under the Australian legal system. 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. **Native title determinations** identify the people who are native title holders.

**ORIC:** The Office of the Registrar of Indigenous Corporations (ORIC) is the government organisation that makes sure Aboriginal Corporations follow the rules in their rule book and the **CATSI Act**.

**Prescribed Body Corporate (PBC):** After a **native title determination**, the **native title holders** need to have an Aboriginal corporation to help them look after native title on their country. This is called a prescribed body corporate or PBC. The PBC needs to follow traditional law and whitefella 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 **native title holders** and that the PBC **directors** can only sign an agreement when the affected **native title holders** sign the **certificate of consultation and consent**.

**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 PBC. All PBCs need to have a rule book. Sometimes the rule book is called a constitution.

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Kimberley Land Council