

PBC Roles & Functions

What is a PBC?

A Prescribed Body Corporate (PBC) is the corporation that holds and manages the native title rights and interests in trust for the Native Title Holders of that area.

PBCs have certain obligations under the *Native Title Act 1993* (Cth) (NTA), such as the requirement to incorporate under the *Corporations (Aboriginal and Torres Strait Islander Act) 2006* (Cth) (CATSI Act), as well as the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (PBC Regulations). The key players that make up a PBC are its members, directors, and officers employed by the corporation. The Native Title Holders, also commonly referred to as Common Law Holders, are also key, as they must be consulted and make decisions on certain native title matters, as laid out in the NTA.

Native Title Holders and PBC membership – what’s the difference?

For the most part, all PBC members are Native Title Holders. A Native Title Holder’s rights and interests are no less important if they are not a member of a PBC. A Native Title Holder has the same say about native title decisions as a Native Title Holder who is also a member of a PBC.

However, people identified as a Native Title Holder by the Federal Court do not automatically become a member of a PBC following a determination. To become a member, a Native Title Holder can follow the membership process outlined in the PBC’s rule book.

A PBC’s eligibility requirements for membership must provide for all the Native Title Holders of the area to be represented. PBCs cannot refuse membership to applicants who meet the eligibility criteria.

RNTBC or PBC?

As described on the Office of the Registrar of Indigenous Corporations (ORIC) website:

“when a determination recognising native title is made by the Federal Court, the Native Title Act 1993 requires traditional owners to establish a corporation to represent them and their interests. These organisations are known as registered native title bodies corporate (RNTBCs). They are most commonly known as prescribed bodies corporate (PBCs).”

YMAC uses the term “PBC” in most publications to refer to both Prescribed Bodies Corporate and Registered Native Title Bodies Corporate.

Why is good governance important?

Good governance:

- ensures that the PBC is compliant with the laws, agreements and regulations governing it and its funding sources,
- sets out a clear process for managing a corporation,
- provides accountability to, and transparency for, members and Native Title Holders, and
- is culturally responsive.



Obligations and functions of PBCs

The NTA and PBC Regulations set out the functions to be carried out by a PBC in managing and holding native title.

The functions set out in the NTA include:

- Receiving future act notices (proposals for work that will affect native title), as well as possibly advising Native Title Holders about, or providing them a copy of, such notices;
- Exercising procedural rights afforded to Native Title Holders under the NTA, including commenting on, objecting to, and negotiating about proposed future acts;
- Preparing submissions to the National Native Title Tribunal or other arbitral bodies about right to negotiate matters, including whether negotiations have occurred in good faith and objecting to the application of the expedited procedure;
- Negotiating, implementing, and monitoring native title agreements;
- Considering compensation matters and bringing native title compensation applications in the Federal Court; and
- Bringing revised or further native title determination applications cases in the Federal Court.

The functions set out in the PBC Regulations include:

- Managing the Native Title Holders' native title rights and interests;
- Holding money (including payments received as compensation or otherwise related to the native title rights and interests) in trust;
- Investing or otherwise applying money held in trust as directed by the Native Title Holders;
- Consulting with the Native Title Holders about decisions that would affect native title and preparing and maintaining documentation as evidence of consultation and consent;
- Consulting and considering the views of the relevant Native Title Representative Body (NTRB) or Native Title Service Provider (NTSP) for an area about a proposed native title decision; and
- Performing any other function relating to the native title rights and interests as directed by the Native Title Holders.

Some of the areas that a PBC might be required to deal with in relation to other Commonwealth and State/Territory legislation may relate to:

- land and water management,
- tenure issues,
- biodiversity and environmental protection,
- cultural heritage, and
- land use planning.

Further, Native Title Holders may decide that they also wish their PBC to engage in a broader range of activities not directly related to the management of native title, such as social and economic development for their communities.

Activities may include, for example, cultural projects, economic development, training and/or employment initiatives. It is up to the directors and members of individual PBCs to decide whether they want their PBC to undertake such activities; in this way, PBCs can work to care for Country, culture and people, using their native title rights to improve the social, economic, and cultural wellbeing of their members.

Who regulates PBCs?

PBCs are regulated by ORIC, the independent statutory office holder who administers the CATSI Act. PBCs must fulfil their compliance obligations through ORIC, which includes submitting annual reports, rule book changes, keeping an accurate membership register, and much more. Like YMAC, ORIC also provides training and resources for directors and members of PBCs to be able to fulfil their statutory obligations.

What are the roles and duties of PBC Directors?

PBC Directors make up the governing body of the corporation and are usually elected by the members (dependent on the PBC's rule book) to carry out the functions of the PBC at Board of Directors meetings.

PBC Directors have duties under the CATSI Act to keep them loyal and accountable to the corporation.

These are:

- 1 Duty to act in good faith.
- 2 Duty of care and diligence.
- 3 Duty to not improperly use position or information.
- 4 Duty to disclose material personal interests.
- 5 Duty to not trade while insolvent.

What about other officers of a PBC?

The CATSI Act duties listed above extend to other officers and employees of a PBC, such as the Chief Executive Officer (CEO) or Company Secretary.

What can I do if I am unhappy with my PBC?

Section 66-1(3A) of the CATSI Act requires all PBC constitutions (or rule books) to include a process for dealing with disputes. Under the CATSI Act, PBCs make their own rules to fit their specific circumstances.

Follow the steps in your PBC's rule book to have your dispute resolved.

All PBC rule books are publicly available on ORIC – find yours by searching its website: oric.gov.au.

What is YMAC's role with PBCs following native title determination?

As an NTRB, YMAC delivers a range of functions to PBCs outlined in the NTA, such as legal and research services, and the administering of Basic Support Funding on behalf of the Federal Government following a native title determination.

YMAC does not automatically provide these services to a PBC post-determination. The NTA specifies YMAC cannot undertake this work without a request to do so from the PBC. When services are provided by YMAC, it is usually undertaken through a service agreement, and YMAC staff then take instruction from the PBC.

In addition to NTA functions, YMAC also offers executive office and other services on a fee-for-service basis.

This includes delivering training and assisting with the development and implementation of strong governance structures to ensure compliance with relevant laws and to enable the PBC to effectively carry out its responsibilities.



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Geraldton
144 Flores Road
Webberton WA 6530
PO Box 2119
Geraldton WA 6531
T: 08 9965 6222

Perth
Level 8,
12 The Esplanade
Perth WA 6000
PO Box 3072
249 Hay Street
East Perth WA
6892
T: 08 9268 7000

Hedland
8 Manganese Street
Wedgefield WA 6721
PO Box 2252 South
Hedland
WA 6722
T: 08 9160 3800

Broome
Shop 2/24
Clementson Street
Broome WA 6725
PO Box 2059
Broome WA 6725

Carnarvon
4 Francis Street
Carnarvon WA 6701
PO Box 1424
Carnarvon WA 6701
T: 08 9965 6222
(open Tues, Wed, Thurs)