



Registered native title bodies corporate

Policy

PS-10: Registered native title bodies corporate

Relevant legislative provisions

CATSI Act sections 1-25 and 66-1, 187-5, Parts 3-4 and 4-2
Native Title Act 1993 (Cth)

Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth)

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Other relevant policies

PS-08: Corporation names

PS-22: Disputes involving corporations



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1. Purpose

- 1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on the provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) which relate to registered native title body corporates (RNTBCs).

2. Native title status

- 2.1 Under the *Native Title Act 1993* (Cth) an RNTBC must be registered under the CATSI Act to hold or manage native title rights and interests on behalf of common law holders. Accordingly, the CATSI Act seeks to recognise and make special provision for those corporations which hold native title rights and interests.
- 2.2 Under the CATSI Act, an RNTBC is defined by reference to the *Native Title Act 1993* (Cth), which establishes a National Native Title Register (NNTR) containing all RNTBCs' names and addresses. The CATSI Act requires a corporation, which is also a RNTBC, to include in its name the words 'registered native title body corporate' or the abbreviation 'RNTBC' – sections 85-1(4) and 85-10. This signals to third parties that the corporation holds or manages native title rights and interests. For more information on corporation naming requirements, refer to 'PS-08: Corporation names'.
- 2.3 If a corporation becomes an RNTBC under the *Native Title Act 1993* (Cth), the corporation must, within 28 days of it being registered on the NNTR, notify the Registrar in writing – section 88-10(1). When the Registrar is notified or otherwise becomes aware of the change, the Registrar must change the corporation's name on the Register of Aboriginal and Torres Strait Islander Corporations (the Register) and include the words 'registered native title body corporate' in the corporation's name – section 88-10(2).
- 2.4 In addition, an Aboriginal and Torres Strait Islander corporation must notify the Registrar in writing, within 28 days, if it ceases to be an RNTBC – section 88-15(1). When the Registrar is notified or otherwise becomes aware of the change, the Registrar must change the corporation's name on the Register by removing the words 'registered native title body corporate' – section 88-15(2).

3. Agreement between the National Native Title Tribunal and the Registrar

- 3.1 To help facilitate notification of changes in native title status, the National Native Title Tribunal (the Tribunal) has agreed to notify the Registrar of any additions, amendments or deletions of RNTBCs on the NNTR. The Registrar will also notify the Tribunal of any amendments to the names of RNTBCs on the Register.

- 3.2 Once notified by the Tribunal of any change in status of a RNTBC the Registrar will change the corporation's name on the Register and issue a new certificate of registration to the corporation – section 88-20(1).
- 3.3 The Registrar also receives regular reports from the Tribunal regarding native title determinations made by the Federal Court, including the name (where known) of the RNTBCs which are to hold native title interests. The Tribunal will continue to provide the Registrar with these reports.

4. Internal governance rules and rule books

- 4.1 The CATSI Act sets out certain internal governance rules that are specific to RNTBCs which either replace or add to the rules set out for other corporations.
- 4.2 As with other corporations, RNTBCs must also comply with all other internal governance rules requirements set out in Part 3-2 of the CATSI Act.
- 4.3 The rule book of every RNTBC must be consistent with these requirements and must also be consistent with native title legislation – section 66-1(5) (c) and (d).

5. Common law holder membership

- 5.1 Common law holders do not automatically become a member of their associated RNTBC.
- 5.2 The rule book of every RNTBC must include eligibility requirements for membership that provide for all the common law holders of native title to be represented in the membership, either directly or indirectly – section 141-25(2). This requirement is intended to prevent common law holders from being arbitrarily excluded from membership and to provide opportunities for all common law holders to get involved in the management of their native title through the relevant RNTBC.
- 5.3 Direct representation occurs where the eligibility requirements provide that each common law holder is eligible to be a personal member of the RNTBC.
- 5.4 Indirect representation may limit membership to one or a small number of people who represent the common law holders in each common law holder sub-group. For example, the rule book may have an eligibility requirement that allows for one or multiple people from each sub-group of common law holders to become members and thereby represent their sub-group in the membership of the corporation.
- 5.5 Persons who consider they are eligible for membership – either as a personal or representative member – must make an application in the form prescribed in the corporation rule book.
- 5.6 If RNTBCs have a direct model of membership, they are not permitted to permanently exclude a common law member from membership. This is inconsistent with the requirements of section 141-25(2).

- 5.7 The Registrar recognises the practical difficulties reconciling the eligibility requirements imposed by section 141-25(2) and the cancellation of membership provisions under section 150-35 that enable a corporation to cancel the membership of a common law holder who has 'significantly interfered with operations of the corporation'.
- 5.8 The Registrar is of the view that the members must give consideration as to how a member can be indirectly represented if the corporation seeks to exclude common law holders who have had their membership cancelled from applying for membership again.
- 5.9 The Registrar further considers that the exclusion of an otherwise eligible common law holder for a period of more than two years may amount to a form of practical exclusion from eligibility that is impermissible under section 141-25(2).
- 5.10 The Registrar will only consider changes to a rule book that exclude previously cancelled members from eligibility where the members will also be required to consider and be satisfied the person will have their interests indirectly represented within the corporation during the two-year period.
- 5.11 The Registrar encourages early consultation with ORIC if RNTBCs wish to make a rule book change to exclude common law holders who have had their membership cancelled for a period of time. The Registrar will carefully consider if any such a rule is consistent with the legislation, and is adequate and workable.

6. Deciding membership applications

- 6.1 Unlike other corporations, the directors of a RNTBC must accept membership applications from persons who:
- meet the eligibility criteria for membership, and
 - apply for membership of the RNTBC in the manner the RNTBC's rule book requires – section 144-10.
- 6.2 The CATSI Act does not stipulate a time period within which the directors must decide member applications. The Registrar considers a period of not more than six months is reasonable in the majority of circumstances.
- 6.3 Where a person considers the RNTBC has taken an unreasonable amount of time to decide a membership application, they should take steps to initiate a dispute notice under the dispute resolution procedures in the RNTBC rule book – see 'Dispute Resolution' below.

7. Cancelling membership

- 7.1 An RNTBC can only cancel membership on the grounds set out in the CATSI Act, following the exact procedures set out in the CATSI Act. The grounds on which a RNTBC may cancel a person's membership are:
- the member is not eligible, or has ceased to be eligible, for membership – section 150-22(3)(a)

- the member has failed to pay fees – section 150-22(3(b))
- the member is uncontactable – section 150-25
- the member is not an Aboriginal and Torres Strait Islander person – section 150-30, and
- the member has misbehaved – section 150-35

7.2 The rule book of an RNTBC cannot provide for cancellation of membership on any other ground unless the corporation has obtained an exemption from the Registrar under section 187-5 – section 150-15(2A).

7.3 The rule book of a RNTBC must provide for procedures for cancellation that are in accordance with the requirements of Division 150 of the CATSI Act and the RNTBC must follow these procedures to lawfully cancel a person's membership of the corporation.

7.4 As noted at above, the cancellation of a member cannot permanently disentitle an otherwise eligible common law holder from being represented directly or indirectly in the membership of an RNTBC.

8. Dispute resolution

8.1 The rule book of each RNTBC is required to have provisions that provide for the resolution of disputes between the corporation and common law holders or people who claim to be common law holders (whether or not they are a member of the corporation). This provision/s must provide for the resolution of disputes in relation to:

- whether or not the person is a common law holder
- the RNTBC's performance of its functions under native title legislation – section 66-1(3B).

8.2 In addition, like all other corporations, the rule book of each RNTBCs must also provide for the resolution of internal disputes – section 66-1(3A). For more information, refer to 'PS-22: Disputes involving corporations'.

8.3 Where an RNTBC refuses the membership application of a person who claims to be a common law holder, the aggrieved person may lodge a dispute notice under these provisions.

8.4 Where a person considers they have not had their dispute handled in accordance with the dispute resolution procedures, they may wish to seek assistance from ORIC with the resolution of their dispute.

8.5 As a general rule ORIC will not assist with the resolution of a dispute before the parties have considered the dispute in accordance with the corporation's own procedures.

End of policy statement