

## Glossary of native title terms for PBCs\*

Terms which are defined in this glossary are **bold** when referred to in other entries.

The last page lists common abbreviations. These are shown in **blue** when referred to in the glossary.

### Alternative dispute resolution

Processes for resolving legal disputes outside of court. They include **arbitration, conciliation and mediation.**

### Alternative procedure agreement

A type of **Indigenous land use agreement (ILUA)**. No **ILUAs** of this type have been registered so far.

### Applicant

The **party(ies)** in a legal action that made the application. In a **native title application** the applicant can include a group of people who together are called 'the applicant'. There can be any number of **respondents**.

### Area agreement

A type of **Indigenous land use agreement (ILUA)** over a defined area which can be made by any native title group, including a **PBC**. An area agreement requires **authorisation**. More information is available in the **Fact Sheet: Indigenous land use agreements (ILUAs) for PBCs**.

### Arbitration

An **alternative dispute resolution** process for resolving disputes outside of court, where an independent person(s) (the 'arbitrator') reviews the evidence for both **parties** and makes a decision that is legally binding on both of them. It is different to **mediation** and **conciliation** because the decision is binding on both parties. Generally, both parties have to agree to arbitration before it can happen, either under a previous agreement or as part of an alternative dispute resolution process.

### Authorisation

The process for all the people in a native title group to make a decision to go ahead with a **native title application** or an **area agreement**. This is usually done at a big meeting which all the people claiming to hold native title can attend. Evidence of authorisation is required before a native title application or area agreement can be registered by the **NNTT**, or before the Federal Court can decide the native title application. (s251B **NTA**).

### Body corporate agreement

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A type of **Indigenous land use agreement (ILUA)** that can only be made where the whole of the agreement area is covered by registered **PBCs**. (ss. 24BA – 24BI **NTA**). More information is available in the **Fact Sheet: Indigenous land use agreements (ILUAs) for PBCs**.

**Certification** The process by which the **NTRB(s)/NTSP(s)** for an area sign a legal document saying that the **authorisation** requirements of the **NTA** have been met (s. 203BE **NTA**) in relation to:

- applications for a determination of native title and
- **area agreements**.

Certification helps the **NNTT** register the application or the **ILUA**.

**Coexistence** The existence and exercise of native title rights alongside the rights of others over the same area of land or waters. For example, native title rights to go onto land and hold ceremonies may coexist with the rights of a pastoral leaseholder to graze cattle. Coexistence is about sharing the land and waters in a way that recognises everyone's rights and interests in the area.

### Common law native title holders

see **native title holders**

**Conciliation** An **alternative dispute resolution** process where the **parties** to a dispute agree to use an independent person (the 'conciliator'), who then meets with the parties separately in an attempt to resolve their differences. The conciliator does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. The parties don't usually actually face each other with the conciliator and the conciliator usually doesn't make a decision for the parties.

**Consensus** An opinion or position reached by the group as a whole or where everyone agrees or everyone doesn't disagree. People often need to compromise to reach consensus.

**Constituency** Usually refers to a group of people who support or who are likely to support a politician or political party; but a constituency can also be a group of people who are represented by an organisation, business or a **peak body**. For instance, the **native title holders** for whom a **PBC** works can be described as that PBC's constituency. Constituency is not the same as membership.

### Constitution (of a PBC)

Another name for a **PBC's rule book**.

- Crown land** Land not held under private ownership (so a State or Territory government makes decisions about it). It might be subject to rights granted by the Crown (a government) under legislation, such as a mining tenement. It might also be subject to native title.
- Expedited Procedure** A fast-tracking process under the [NTA](#) for **future acts** that would normally have the **right to negotiate**, but are considered to have minimal impact on native title, such as the grant of some exploration and prospecting licenses. If the expedited procedure is used, and no objection is lodged, the future act can be done by a government without following the right to negotiate process. The government must say on a **Future Act Notice** if it thinks the expedited procedure applies. A [PBC](#) can object if it does not agree. More information is available in the [Fact Sheet: The Right to Negotiate \(RTN\) for PBCs](#).
- Extinguishment** If native title is extinguished by an act of a government, it is no longer recognised under Australian law and native title cannot be recognised under the [NTA](#). Under current Australian law, once native title is extinguished it cannot be recognised by a court.
- Facilitator** Someone who helps a group understand their common objectives and assists their planning to achieve them without taking a particular position in the discussion. Sometimes facilitators will try to assist the group in achieving a **consensus** on any pre-existing or emerging disagreements so that negotiations can go ahead more easily.
- Future act** A proposal to do something (e.g. pass legislation or permit a development on a particular area) that will affect native title by **extinguishing** or **suppressing** it, or creating interests that are inconsistent with the continued existence, enjoyment or exercise of native title. Examples include the grant of mining or exploration rights and the compulsory acquisition of native title by a government.
- The [NTA](#) gives native title holders and registered native title claimants **procedural rights** in relation to certain future acts. Depending on the type of future act, these rights include rights to be notified, to comment, to object, to be consulted, and the **right to negotiate**. For some future acts there are no procedural rights (Part 2 Division 3 [NTA](#)). More information is available in the [Fact Sheet: Future Acts for PBCs](#).
- Future act notice** Under the [NTA](#), the **proponent** of a **future act**, usually a state or territory government, must send a notice about the future act to the [PBC](#), the [NTRB](#), and/or **registered native title claimants**. Depending on the type of future

act, the PBC/registered native title claimants may have certain **procedural rights**.

**Future act regime** The rules and procedures which apply to **future acts** under the NTA (Part 2 Division 3).

**Good faith** see **negotiation in good faith**

**Governance** Governance is about how your organisation is run - the structures and systems and understandings that enable you to make the right decisions. It is usually the responsibility of the board to look after governance, while the CEO and staff look after day to day management.

### **Indigenous land use agreement (ILUA)**

A voluntary agreement that can be about the use or management of an area of land or waters where native title exists or might exist, including about whether a **future act** can be done. The agreement is made between one or more native title groups and others (such as miners, pastoralists or governments). An **ILUA** registered with the **NNTT** is legally binding on the people who are parties to the agreement as well as all **native title holders** for that area, whether or not they knew about it. More information is available in the [Fact Sheet: Indigenous land use agreements \(ILUAs\) for PBCs](#).

### **Inquiry hearing (future act)**

When the **NNTT** hears evidence and submissions by parties in a **right to negotiate** inquiry (i.e. a **future act** determination inquiry or an **expedited procedure** objection inquiry). In some cases the **NNTT** can make a determination based on written evidence and submissions alone, without holding an inquiry hearing.

### **Mediation**

An **alternative dispute resolution** process which allows **parties**, with the assistance of an independent person(s) (the 'mediator'), to discuss their interests in the area, identify the issues and explore ways to reach agreement about the resolution of a dispute, including whether a future act should be done. Mediation processes can be useful where negotiation is not progressing.

**Member (of a PBC)** A **native title holder** who has applied for membership of their **PBC** and is listed on the **PBC's** members register.

### **National Native Title Register**

A register of all the native title determinations (all the recognised native title) in Australia that is kept by the **Native Title Registrar**.

### **National Native Title Tribunal (NNTT)**

An independent **statutory** body established under the **NTA** to assist people to resolve native title issues, make **future act** determinations, and notify people about **native title applications** (**NTA** s. 107 Part 6).

### Native title application

An application to the Federal Court for a determination that native title exists and should be recognised; sometimes also called a native title claim.

**Native title claim** see **native title application**

### Native title claim group

The group on whose behalf an **applicant** makes a **native title application**; the group of people who want to be recognised as **native title holders**.

**Native title holder** Also called common law native title holders (see also **prescribed body corporate** (**PBC**))

A person whose native title rights and interests over a particular area of land or waters have been recognised by a court. Native title holders are not automatically a **member** of their PBC. They need to apply to the PBC to become a member.

(Note that where there has been a determination of native title and a **prescribed body corporate** (**PBC**) is registered on the **National Native Title Register** as holding native title rights and interests on trust (s. 224 **NTA**), it can also be called the 'native title holder' in some circumstances.)

**Native title party** In relation to **right to negotiate** applications, it means the registered native title claimants and **registered native title bodies corporate** (**PBCs**) that meet certain statutory requirements (ss. 253, 29(2) and 30 **NTA**).

### Native Title Registrar

A **statutory** office holder who:

- applies the **registration test** to native title determination applications
- decides whether to register **ILUAs**
- gives notice of native title determination applications, compensation applications, revised native title determination applications and applications for the registration of **ILUAs**
- provides certain forms of assistance
- maintains the **National Native Title Register**, the **Register of Native Title Claims** and the **Register of Indigenous Land Use Agreements**.

### Native title representative body (NTRB)

Also known as **representative Aboriginal/Torres Strait Islander body** or representative bodies or rep bodies. These organisations are recognised and funded by the Commonwealth Government to perform a wide variety of

functions under the [NTA](#). These functions include assisting and facilitating **native title holders** to access and exercise their rights under the NTA, certifying applications for determinations of native title and area agreements ([ILUAs](#)), resolving intra-indigenous disputes, agreement making and ensuring that notices given under the [NTA](#) are brought to the attention of the relevant people. The Government can also fund other people or organisations to perform some or all of the functions of a representative body (see Part 11 [NTA](#)). These are called **native title service providers** ([NTSPs](#)).

### Native title rights and interests

The communal, group or individual rights and interests of Aboriginal and Torres Strait Islander people in relation to land and waters, possessed under traditional laws and customs, by which those people have a connection with the land and waters, and where the rights and interests are recognised under Australian law (s. 223 [NTA](#)).

### Native title service provider (NTSP)

Organisations funded by the Commonwealth Government to perform some or all of native title **statutory** functions of a **native title representative body**.

### Negotiation in good faith

This term is not defined in the [NTA](#). The [NTA](#) requires all negotiation parties to negotiate in good faith with a view to getting the agreement of the native title parties to the doing of **future acts** to which the **right to negotiate** applies (s. 31(1)(b) [NTA](#)). Amendments to the [NTA](#) proposed in 2012 would define good faith in more detail but are not yet law.

### Non-extinguishment principle

Usually native title is **suppressed** (not **extinguished**) by a **future act** so that the native title rights can't be exercised or used for the duration of the future act. Once the future act has finished then the native title returns with all its original rights and interests.

### Notification

The process by which a government and [NNTT](#) inform **native title holders** and [PBCs](#) (or sometimes the public) that

- a government intends to do certain **future acts**, such as granting a mining lease (e.g. s. 29 [NTA](#))
- a native title determination application, a compensation application, or a revised native title determination application has been made and, in some cases, amendments have been made to such an application (ss. 66 and 66A [NTA](#)) and
- an application for the registration of an [ILUA](#) has been made (ss. 24BH, 24CH and 24DI [NTA](#)).

It usually includes letters to the [PBC](#) and NTRB and sometimes public notices (ads) in newspapers.

### Notification period

a period of time after **notification** during which people can do certain things under the [NTA](#) e.g. a [PBC](#) using its **procedural rights** after receiving a **future act** notice; someone objecting to the registration of an **uncertified area agreement** (s. 24CI [NTA](#)); or a person notifying the Federal Court of their intention to become a party to a **native title application** (s. 61 [NTA](#)).

The length of the notification period depends on the type of notice. An [ILUA](#) can only be registered after the notification period has ended.

### Objection (future act)

**Registered native title claimants** and **registered native title bodies corporate** ([RNTBCs](#)) can object to the granting of a mining tenement being fast-tracked using the **expedited procedure**. They (currently) have four months from the notification day to lodge an objection. If the objection is successful, the development cannot go ahead without going through the **right to negotiate** under the [NTA](#).

### Objection (ILUA)

Any person claiming to hold native title can object to the registration of an:

- **area agreement**, on the basis that the requirement for the [NTRB/NTSP](#) to certify it have not been met ([NTA](#) ss. 24CI and 203BE(5)(a) and (b)) or
- **alternative procedure agreement**, on the grounds that it would not be fair and reasonable to register the agreement ([NTA](#) s. 24DJ(1)).

There are other potential issues that may stop the registration of [ILUAs](#) but they are not formal 'objections'.

### Party/parties

The parties to a **native title application** are those recognised by the Federal Court as having an interest in the land covered by the application. They always include the native title **applicant** and the relevant state or territory government. They can also include other **respondents**, for example the Commonwealth Government, **peak bodies** or individuals, like pastoral lease holders, miners and other land users.

Parties to a negotiation are those groups who are involved in a negotiation and would be bound by any agreement that comes out of the negotiation.

Parties to an agreement are those who make that agreement. If someone has properly signed an agreement for a government or for a company, the government or company is a party to that agreement. If someone has properly signed an agreement on behalf of a [PBC](#), it is a party. If the

agreement is a registered [ILUA](#), then the **native title holders** are also bound by it.

### Past act

This has a very specific definition in the [NTA](#) which is quite complex. Generally speaking, a ‘past act’ is a legislative act done before 1 July 1993 or any other act done before 1 January 1994 which is **invalid** to any extent because of the existence of native title (s. 228 [NTA](#)). However, just because something happened in the past doesn’t mean it is a ‘past act’ under the [NTA](#). Some **future acts** have happened in the past and some past acts have happened after 1 January 1994, which is why this term is so confusing.

### Peak body

An organisation that represents people with common interests. In native title peak bodies might include **native title representative bodies**, farmers’ federation, industry councils (fishing, mining etc) and local government associations.

### Prescribed body corporate (PBC)

A body nominated by native title holders to manage their **native title rights and interests** as their trustee or agent once a determination that native title exists has been made, and to consult them about **future acts** that will affect their native title rights and interests. When registered with the [NNTT](#), PBCs are also called **registered native title bodies corporate (RNTBC)**.

### Procedural rights

These include the right to be notified, to object, to be consulted, to comment and the **right to negotiate** as part of the procedures to be followed under the [NTA](#) when certain **future acts** are proposed (s. 253 [NTA](#)). More information is available in the [Fact Sheet: Future Acts for PBCs](#).

### Proponent

A company or government that wants to do something on land or to develop land (eg those who propose to do a **future act**).

### Regime

A system of procedures with rules and regulations. For example, the **future act regime**.

### Register of Indigenous Land Use Agreements

A register established under Part 8A of the [NTA](#) which contains information about all [ILUAs](#) that have been registered. The Register is kept by the **Native Title Registrar**.

### Register of Native Title Claims

A register established under Part 7 of the [NTA](#) which contains information about all native title determination applications that have been registered. The Register is kept by the **Native Title Registrar**.



**Registered native title body corporate (RNTBC)**

A prescribed body corporate (PBC) nominated by **native title holders** to hold their **native title rights and interests** as their trustee or manage them as their agent once a determination that native title exists has been made. Once the court determines that the corporation is to be the PBC, it is entered onto the **National Native Title Register** as a registered native title body corporate (ss. 193(2)(e) and 253 NTA).

**Registered native title claimants**

People whose names appear on the **Register of Native Title Claims** as applicants in relation to claims to hold native title (s. 253 NTA). Only registered native title claimants have certain **procedural rights** regarding **future acts** before a native title determination is made.

**Registration test** This is applied by the NNTT to determine whether a **native title application** can be registered. Once their native title application has been registered, the **native title claim group** have certain rights, including **procedural rights** regarding **future acts** in the native title area.

**Representative Aboriginal/Torres Strait Islander body**

see **native title representative bodies (NTRBs)** and **native title service providers (NTSPs)**.

**Respondent(s)** The **party(ies)** in a legal action who did not make the application. In a **native title application** the first respondent is usually the state or territory government. There can be any number of other respondents. The party which makes the application is called the **applicant**.

**Right to negotiate (RTN)**

The right of **registered native title claimants** or **registered native title bodies corporate** to negotiate about (but not veto) certain types of **future acts** (usually the grant of a mining tenement but also some acts of compulsory acquisition). Where the right to negotiate applies, **negotiations in good faith** must occur before the future act can be done. If no agreement is reached an application can be made to the **National Native Title Tribunal** to determine whether the act can be done and if so under what, if any, conditions (Subdivision P Division 3 Part 2 NTA). More information is available in the **Fact Sheet: The Right to Negotiate (RTN) for PBCs**.

**Rule book**

The PBC rule book governs how a corporation should be run. This includes how to elect directors and hold meetings that meet legal requirements. It is also called a **Constitution**.

- Statutory** This means according to legislation (statute). A statutory requirement is something that is required by law.
- Subsidiarity** The idea that a decision should be handled by the smallest, lowest, or least centralised authority able to address that matter effectively, so that it is more likely to be made by the people most affected by it. In PBC decisions, it can mean that the whole group doesn't weigh in on a native title decision if it will impact on areas for which only some people have traditional ownership of. Whether this is how a PBC makes its decisions is up to its members and the native title holders, and can be included in its Rule Book.
- Suppression** If native title is suppressed for the duration of a **future act**, then native title rights and interests cannot be enjoyed for the duration of that future act. Once the future act has finished, then native title can return (see **non-extinguishment principle**).
- Unallocated Crown/state land OR Vacant crown land**  
This is land that is held by the Crown (ie the government). **Crown land** may be able to be claimed under the NTA. It might be subject to rights granted by the Crown under legislation, such as a mining tenement.
- Valid/validate** If an act or an agreement is valid, this means that it is legal – or it 'can be legally done'. To validate something means to make it legal to do (eg by registering an ILUA, or having a **future act** approved through all the proper procedures).
- Without prejudice privilege**  
If discussions are held or documents produced 'without prejudice' then they cannot be later used as evidence in a court that is deciding the same issue. This privilege is often claimed during **mediation** or negotiations aimed at resolving a claim or matter by agreement.
- Mediation conferences under the NTA are 'without prejudice' in relation to proceedings before the Federal Court unless the parties agree otherwise (s. 136A(4) NTA).

## Common abbreviations

AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
FaHCSIA	The Department of Families, Housing, Community Services and Indigenous Affairs (Federal)
ILUA	Indigenous Land Use Agreement
NTA	<i>Native Title Act 1993</i>
NNTT	National Native Title Tribunal (also called the Tribunal)
NTRB	Native Title Representative Body (sometimes NTRB is used to refer to both NTRBs and NTSPs)
NTSP	Native Title Service Provider
ORIC	Office of the Registrar of Indigenous Corporations (oversees the CATSI Act)
PBC	Prescribed Body Corporate (when registered these are also called RNTBCs)
RNTBC	Registered Native Title Body Corporate (a registered PBC)
RTN	Right to negotiate