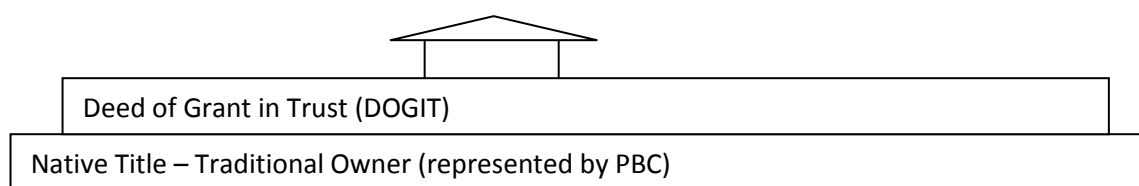


Native Title, Indigenous Land Use Agreements, Native Title Representative Bodies and Prescribed Bodies Corporate

What is Native Title?

1. Before the Mabo case, Australia's common law (the law that came from England) had no way of recognising the traditional laws and customs of Australia's first peoples. The Mabo case made it possible for the traditional laws and customs of Torres Strait Islanders to be part of Australian common law.
2. Native Title is recognised by the Federal Court of Australia. This is called a Native Title determination. The determination is a public document and on the internet for anyone to see. It describes which parts of an island have native title and which do not.
3. The determination is made for all the descendants of the people listed in the native title claim. The determination is made for people as a group, but they might still have their own separate areas of land under their own traditional lore and custom.
4. After the native title determination is made, the Prescribed Body Corporate (PBC) must be made to look after all the native title land. A PBC holds native title either as a trust or as an agent for all the individual Traditional Owners, and its role is to represent the views of the Traditional Owners to outsiders who might want to do things on the land.
5. The native title also co-exists with the Deed of Grant in Trust (DOGIT) which is held by the Torres Strait Island Regional Council. These are overlapping land titles:



6. Only the DOGIT interest can be registered with the Land Titles Office like any other land interest. The DOGIT is held by TSIRC for the benefit of those who live on or use the land. The Council can issue a lease of the DOGIT area to any person or organisation. TSIRC needs to get permission from the Traditional Owners if there is Native Title. They can only do this through the PBC.
7. On Mer there is no DOGIT. On Mer there is a Reserve that is managed by the Department of Communities. In 2012 the Reserve will be managed by the PBC.

8. If someone wants to build on or use your land they must get your permission. Permission is also called Consent. They need this Consent if they are taking a legal interest in the land. The way you give your permission is through a contract called an **Indigenous Land Use Agreement (ILUA)**.

What is an Indigenous Land Use Agreement (ILUA)?

1. The way that you give permission or consent for an outside person or organisation to use your native title land is by signing a contract called an **Indigenous Land Use Agreement (ILUA)**.
2. An ILUA is a special kind of contract which is registered with the National Native Title Tribunal. Registered means that they keep a copy on their official record.
3. The PBC negotiates ILUAs on your behalf so they must come and talk to you about it and get your permission before they can sign an agreement. This is called **Consultation and Consent**.

Consultation and Consent is the law under the *Native Title Act 1993* and the PBC CANNOT say it is okay for someone else to use your land or sign any agreements unless it has consulted you and you have given your consent.

4. You must also sign something to say that you consent to the person or organisation using your land, and that the PBC has asked (consulted) you. This is the proof of the **Consultation and Consent**.
5. The ILUA is the document that lets the Council issue a trustee lease of the DOGIT.
6. The Native Title Act 1993 says that Traditional Owners have the right to be compensated for the loss of their land, just like any other land owner in Australia. This means they have the right to be paid by the person who is asking to use the land.
7. The ILUA must say the amount of compensation that has been agreed to for use of the land. If it says nothing about the compensation, then there is no other way to get any payment for the land. If the ILUA says nothing, then the traditional owners lose the right to compensation for that activity forever.
8. You do not have to ask for compensation but if you do not ask for it before the ILUA is signed then you lose your right to any compensation.
9. Compensation can be money but could also include any other things.

10. The ILUA can say any other things that everyone has agreed to.

What is a Native Title Representative Body (NTRB)?

The Torres Strait Regional Authority is the Native Title Representative Body (NTRB) for the Torres Strait region. There are many other NTRBs across the country. Sometimes they are called Native Title Service Providers. They are slightly different but mainly the same.

The *Native Title Act 1993* says more about what the role and function of an NTRB is but their primary job is to help Traditional Owners pursue their rights to land under the *Native Title Act 1993*.

The Native Title Office of the TSRA is the Native Title Representative Body and acts as the lawyer to the PBC when it asks for help for native title things. They help negotiate ILUAs with the PBC on behalf of the Traditional Owner.

When the PBC has done **Consultation and Consent** then they ask the lawyers at the Native Title Office to help them get a good deal for families. This is called **Negotiation**. The lawyers at the Native Title Office can't do anything unless the PBC tells them. This is called **Instruction**.

What the NTO can help with:	What the NTO can NOT help with:
<ul style="list-style-type: none"> • Negotiating Indigenous Land Use Agreements 	<ul style="list-style-type: none"> • Resolving land disputes about traditional law and custom – this should be the role of the PBC.
<ul style="list-style-type: none"> • Making land and sea claims over islands and waters 	<ul style="list-style-type: none"> • Make submission to government on your behalf about non land rights related topics
<ul style="list-style-type: none"> • Make submissions to government on your behalf about Native Title law and policy and the Torres Strait Islander Land Act 	<ul style="list-style-type: none"> • Grant applications, and small business loans and advice. You should contact the PBC support Officer or the Economic Development unit of the TSRA for help with this.
<ul style="list-style-type: none"> • Send you notices which come from Telstra, Ergon or government departments like Fisheries about activities they wish to undertake on the native title land, or permits they intend to issue over the sea. We may also assist in making comments to these organisations on your behalf if necessary. 	
<ul style="list-style-type: none"> • Making compensation claims to the federal court 	

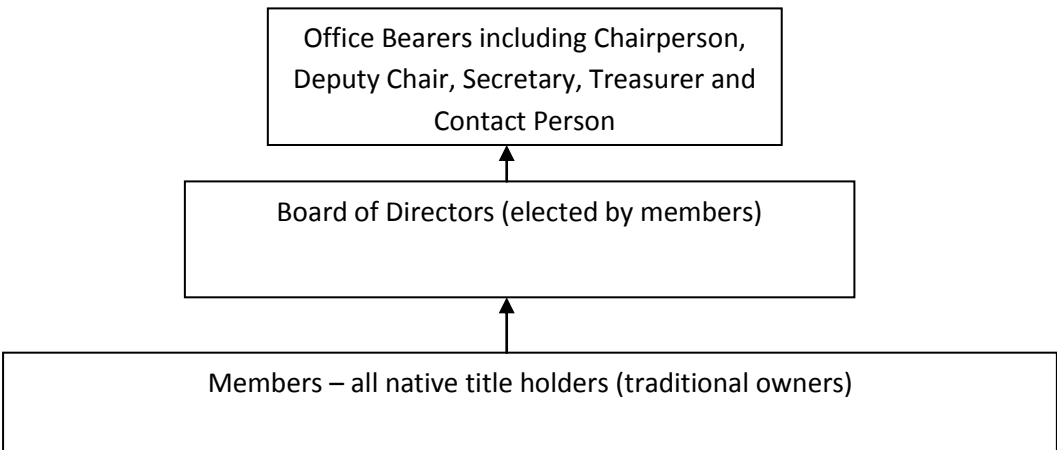
<ul style="list-style-type: none"> Explaining the Native Title Act and your rights 	
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TSRA Native Title Office - 40692581 or Toll FREE 1800 029 719

56 Douglas St, Thursday Island 4875

What is a PBC?

1. PBC stands for Prescribed Body Corporate. After the federal court says that native title exists on an island, the native title holders have to set up a Corporation to look after the native title, on behalf of all the native title families.
2. RNTBC stands for Registered Native Title Body Corporate. This is the same as a PBC.
3. The PBC is the legal body used to represent all of the traditional owner families on the island, and do business on their behalf. It should consult with all of the island traditional owners as often as possible and act on their wishes.
4. Every PBC must be registered with the Office of the Registrar for Indigenous Corporations (ORIC) and they have to follow all the laws in the *Corporations (Aboriginal and Torres Strait Islanders) Act 2006*.
5. A corporation is made up of the members, who are all of the people who join up to the corporation, and the directors, the people who the members choose to direct and lead the corporation and to represent the members. The members elect the directors, and the directors must listen to what the members say.



BECOMING A MEMBER -

All relatives of the family groups identified in the native title determination can apply to be a member of the PBC.

If you are a member of the PBC then it means you have a say in the way the PBC does business. It means you can talk at meetings, and vote on things, just like at a P&C Meeting.

If you want to become a member you need to fill out a membership form. You should give the form to the directors. The Directors will then make a decision about the membership. If you are traditional owner then they can't say no unless they give you a reason in writing.

When they decide that you are a member they will put your name on the Register. This means that you can go to native title meetings and have your say.

BECOMING A DIRECTOR –

The Rulebook for the PBC tells you how many Directors there are. The Directors sit on a Board or a Committee just like at the P&C.

It is very important that the right people are elected as they are the ones who will run the PBC – if you want it to run good then you have to have the right people run it.

BECOMING AN OFFICEBEARER –

The Directors decide who will be the Chair, the Deputy Chair and the Treasurer at the first meeting after the election.

The PBC must also have a contact person. The contact person can be one of the Directors but doesn't have to be. **The role of the contact person is very important as they are responsible for receiving any mail or messages for the PBC and have to pass the information on to the members.**

WHAT ELSE DOES THE PBC HAVE TO DO? -

The PBC must have a Rulebook and follow the rules in it. The most important things a PBC must do every year are:

- **HOLD AN AGM**
- **SEND A GENERAL REPORT TO ORIC**
- **KEEP AN UP TO DATE REGISTER OF MEMBERS**
- **HOLD ELECTIONS (EVERY SECOND YEAR)**
- **FOLLOW ALL THE RULES IN ITS RULEBOOK**

If it does not do these things then it is breaking the law and can get into trouble.

The PBC is accountable to its members like any other corporation. That means that the PBC should be acting on behalf of all of the traditional owner families on the island and doing the right thing by them. If the members don't like what the directors are doing, they can ask for a vote on what they don't like to try to fix the problem.

Ask your PBC for a copy of their Rulebook and learn how it works! Or call TSRA's PBC Support Officer for more information on 07 4069 0700.