

APPS LAW

NATIVE TITLE DECISIONS CHECKLIST FOR RNTBCs

Material considered within this checklist:

1. Consulting and notifying common law holders
2. Obtaining common law holder consent
3. Preparing a native title decision certificate
4. Practical checks

MPS Law has worked with RNTBCs across Australia and has conducted numerous meetings in remote, regional, and suburban locations. MPS Law has developed this checklist to assist RNTBCs with native title decision making. We encourage you to read this document in conjunction with our native title decision making explanatory summary, available on our website along with other resources for RNTBCs.

For a complimentary discussion about this checklist please email info@mpslaw.com.au.

Your name: _____

Your role: _____

Corporation: _____

Date: _____

Note: This document is intended as a guide only, to assist with the facilitation of native title decisions in accordance with the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth). This does not constitute legal advice. The issues and questions set out are of a general nature and may not reflect your specific circumstances. There may be additional and important issues that should be considered when considering your unique circumstance. If you or your organisation has a legal problem you should obtain professional advice from a legal practitioner.

Native title decision means a decision:

- (a) to surrender native title rights and interests in relation to land or waters; or
- (b) to enter into an indigenous land use agreement or an agreement under the right to negotiate process; or
- (c) to allow a person who is not a common law holder, or a class of persons who are not common law holders, to become members of a RNTBC; or
- (d) to include one or more consultation process in the RNTBC's Rule Book; or
- (e) to do, or agree to, any act that would otherwise affect the native title rights and interests of the common law holders (other than a decision to make a compensation application)

The Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth) (the Regulations) contain requirements RNTBCs must satisfy when making native title decisions. These requirements include consulting with, and obtaining the consent of, common law holders in relation to native title decisions.

This checklist sets out considerations that will help to support a consultation process where native title decisions are made in a way that satisfies the Regulations and common law holders are effectively consulted, and their consent obtained in accordance with the principle of free, prior and informed consent.

The native title decision making explanatory summary is helpful to better understand this checklist.

Consulting and notifying common law holders		
Have you consulted with common law holders before notifying of any proposed native title decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has consultation with common law holders been recorded?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you given notice to the common law holders (by post and email) of the native title meeting, providing a description of the proposed native title decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does your notice properly identify who is entitled to attend a native title meeting?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you published the notice at key community organisations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you published the notice on the PBC website (if applicable)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you included the notice in regional papers and radios?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you prepared a comprehensive presentation on the proposed decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you prepared plain English summaries of the proposed decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you giving common law holders an opportunity to review documents and ask questions before the meeting?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do common law holders understand the agenda for the meeting?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Obtaining common law holder consent		
If an interpreter is required, has one been provided to common law holders?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you held a meeting to inform the common law holders of the decision in relation to the background and nature of the decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have common law holders and the PBC had the opportunity to seek legal advice on the proposed decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have common law holders had the opportunity to ask questions?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have common law holders decided on the decision-making process?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have common law holders voted on the proposed decisions in accordance with a either a mandatory traditional decision-making process, or otherwise an agreed to or adopted decision making process?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If necessary, has the decision been independently scrutinised?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the common law holders' decision been recorded in the meeting minutes?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Certificate		
Have you prepared a certificate in writing signed by 2 directors or the CEO certifying that the RNTBC has consulted with and obtained consent from the common law holders in relation to the native title decision?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
Have you stored the completed certificate onto a register so it can be easily accessed should the RNTBC be required to provide a copy to an eligible common law holder?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
Practical checks		
If maps would assist, have they been printed and are they sufficiently clear?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
If common law holders are being provided assistance to attend the meeting, is the process fair and clear?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
If independent facilitation is required, has the independent facilitator been properly briefed?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
If the meeting will be large, have local authorities and organisations been advised of the meeting, including general purpose, location and likely numbers?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
If there may be concerns about safety, has security been arranged?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
If there may be queries about who is entitled to attend the meeting, has a process been designed to resolve queries before the meeting (including assistance from an anthropologist, if required)?	<input type="checkbox"/>	Yes <input type="checkbox"/> No
Have arrangements been made to manage risks and ensure compliance relating to COVID-19?	<input type="checkbox"/>	Yes <input type="checkbox"/> No

Practical checks		
Has the meeting venue been appropriately set up, particularly seating, audio visual and heating/cooling?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is there appropriate catering and scheduled breaks to promote the well-being of attendees, particularly attendees with diabetes and other health considerations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If there is an usual or anticipated decision-making process, have arrangements been made to prepare for and manage that process (including ballot systems and/or vote counters, for example)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is it necessary and appropriate for a photographer and/or videographer, and if so, have attendees consented to photos and/or videos?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Will a public statement or media release be necessary and appropriate, and if so, has this been approved by the RNTBC with a contact person for further information?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do common law holders know who to contact to follow up the implementation of any decision/s?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have costs for the meeting been recovered or paid by an entity other than the RNTBC, if possible?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

How can we help?

Let's talk about your needs

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