



Rule book changes for RNTBCs

On 25 March 2021, changes to the *Native Title Act 1993* (NTA) and *Corporations (Aboriginal and Torres Strait Islander Act 2006)* (CATSI Act) came into effect. The changes require all registered native title bodies corporate (RNTBCs) to ensure their rule books meet certain requirements for membership and disputes.

What rules need to change?

All RNTBCs must have particular rules about **membership** and **disputes**.

These are the rules you need to revise:

- ✓ who can become a member
- ✓ accepting an application for membership
- ✓ reasons for cancelling membership
- ✓ process for cancelling membership
- ✓ dispute resolution

See more about these requirements on the next page.

Template rule book available

ORIC has a *Model rule book for RNTBCs* which sets out rules on some key native title obligations for RNTBCs.

Get a copy from
oric.gov.au/native-title

By when?

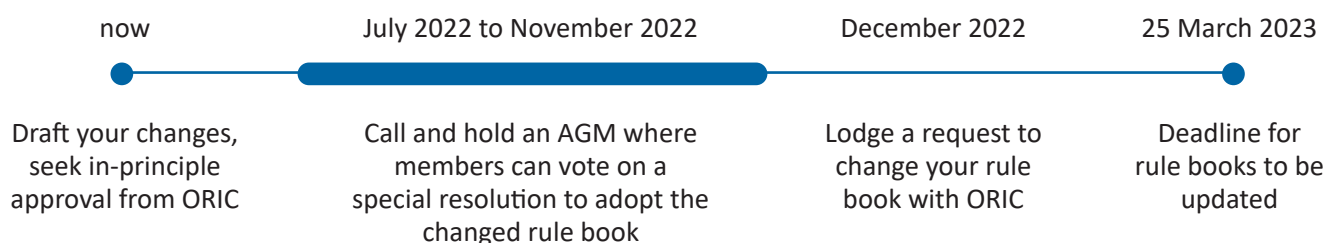
A corporation that is registered to become an RNTBC after 25 March 2021 must cover the requirements from the date it becomes an RNTBC.

A corporation that was registered to become an RNTBC before 25 March 2021 has until 25 March 2023 to update its rule book to meet the new requirements.

A corporation that is registered in order to become an RNTBC does not have to meet these requirements until a determination of native title is made where it is prescribed as the body corporate to hold or manage the native title. However, the rule book should include membership eligibility criteria that apply before the native title determination and once the corporation becomes an RNTBC.

Timeline for making changes

Because changing a rule book requires approval from members at a general meeting, it's a good idea to start working on changes ahead of your annual general meeting (AGM). That way you can include the proposed special resolution to change the rules in the business of your AGM, which—unless ORIC has granted you an exemption from the timeframe—must be held between 1 July and 30 November 2022.



Every RNTBC must have these rules:

- ✓ The rule about **member eligibility** must **allow for all common law holders to be represented** in the membership of the corporation—either directly or indirectly (section 141–25(2)).

What's the difference between direct and indirect?

- direct representation membership model = all individual common law holders who are the minimum age for membership may be a member
- indirect representation membership model = only one person (or a set number of people) representing each common law holder sub-group may be a member.

- ✓ The rule about **deciding member applications** must say that if the applicant is eligible for membership and applies in the proper way, **directors must accept the application for membership**. There must be no rules that say otherwise (section 144–10 (3A)).

- ✓ The rule about cancelling membership must say **the only reasons a person's membership can be cancelled are those set out in the CATSI Act** (section 150–15(2)). The rule must include no other reasons for cancelling a membership (section 150–15(2A)).

The reasons are:

- uncontactability (section 150–15(2))—the corporation has tried at least twice within 2 years but has been unable to contact the member
- non-Indigeneity where Indigeneity is a requirement for membership eligibility (section 150–15(2))—the member is not an Aboriginal or Torres Strait Islander person and it's a requirement to be a member
- disruptive misbehaviour (section 150–15(2))—the member behaves in a way that significantly interferes with the corporation's operations or meetings
- ineligibility (section 150–22)—the member doesn't meet the corporation's membership eligibility criteria (other than the requirement to be an Aboriginal or Torres Strait Islander person)
- failure to pay fees (section 150–22)—where the corporation's rule book requires payment of a membership fee, and the member has not paid.

- ✓ The rule about **how membership is cancelled** must **match the processes set out in the CATSI Act** (section 150–22). There must be no other process for cancelling membership.

The process is different depending on the reason for cancellation:

- If the reason is uncontactability (section 150–25), non-Indigeneity (section 150–30), or disruptive misbehaviour (section 150–35), the process is:
 - » The corporation calls a general meeting of members and includes in the notice for the meeting the exact words of the proposed special resolution to cancel the membership.
 - » At the meeting, members vote on the special resolution. For the special resolution to pass, at least 75% of the votes cast must be in favour.
 - » The directors must give a copy of the resolution and outcome to the former member as soon as possible after the meeting.
- If the reason is ineligibility or failure to pay fees (section 150–22), the process is:
 - » Directors must give the member written notice of their intention to cancel the membership, including the reason/s, allowing them 14 days to object.
 - » The member has 14 days to respond in writing if they object to the cancellation.
 - » If the member doesn't respond the directors must cancel the membership.
 - » If the member responds, objecting to the cancellation, the only way to cancel their membership is if the members pass a resolution (an ordinary resolution, not a special resolution) in a general meeting.
 - » After the membership is cancelled (by directors' resolution or by members' resolution at a general meeting) the directors must give the member a copy of the resolution.

For more see *ORIC's fact sheet: Becoming a member*.

- ✓ There must be a rule about **how to resolve a dispute between the RNTBC and a common law holder** (or person who claims to be a common law holder) over:

- whether or not the person is a common law holder or
- the RNTBC's performance of its native title functions.

(section 66–1(3B))

ORIC has provided an example for this rule in its *Model rule book for RNTBCs*.

How to change your rule book

Step 1. Form a group to review your rules

In some corporations the board reviews the rules; in others the board appoints a working group to do it. The working group could have a mix of corporation members, common law holders, a person from your native title representative body or a person with skills or expertise in designing rules.

The working group checks if:

- the current rule book already meets the requirements of the native title amendments and if not, what changes need to be made to ensure it does
- there are any other rules (not related to the native title amendments) that aren't working well for the corporation, e.g. rules that are often misunderstood by people using the rule book or that no longer reflect the way you want the corporation to run.

The working group drafts changes to address those matters.

Step 2. Have ORIC check your proposed changes—optional

Before you go to the trouble and expense of calling a general meeting, you can ask ORIC to review your proposed rule book to ensure it meets the requirements of the native title amendments to the CATSI Act.

ORIC assesses the proposed rule book and, if it meets the requirements of the CATSI Act, writes to the corporation to say the proposed rule book is 'approved in principle'.

Step 3. Consult common law holders—if applicable

If the RNTBC wants the rule book to have a rule about how to consult the common law holders or a rule that allows anyone who is not a common law holder to become a member, the RNTBC must consult the common law holders and get their permission. The way the common law holders give their permission must follow the rules in the PBC Regulations.

Step 4. Get ready to call a general meeting

First, the board of directors decides when and where to hold the meeting. If you've timed your work well you can include it in the business of your annual general meeting, which—unless you get an extension of time from ORIC—will be between July and November 2022.

Make sure the paperwork is ready to ask the members to approve the proposed rule changes:

- Prepare a **special resolution**—the exact words that you will ask members to agree to.
- Prepare an **agenda** for the general meeting.
- Prepare a **notice for the general meeting** and attach the agenda, the special resolution and a **copy of the proposed rule changes**. If your current rule book allows for proxies at general meetings, include the appointment form and where to send it.

Step 5. Call the general meeting

The board of directors sends the notice of meeting to all members and anyone else entitled to receive notice of your corporation's general meetings—check what your current rule book says.

Step 6. Hold the meeting for members to decide

Take minutes of the meeting, including the members' decision on the special resolution.

- If 75% or more of the votes cast by members agree to adopt the changes, the resolution is passed and you can now lodge the revised rule book with ORIC. Remember your current rules still apply until ORIC approves and registers the new rule book—**go to step 7**.
- If less than 75% of the votes cast by members agree with the resolution you need to find out why and consider how to adapt it so more members will agree. If the issue is minor, you might be able to resolve it then and there to pass the resolution. If the members want significant changes to the proposed rules, the working group might need to do more work on the draft—**return to step 1**.

Step 7. Lodge the proposed changes with ORIC

Either using online.oric.gov.au or a hard copy form, lodge a request with ORIC to change your rule book and attach:

- the proposed new rule book
- a copy of the notice of the general meeting showing the proposed special resolution
- a copy of the minutes of the general meeting showing that members passed the special resolution.

If you already got 'in-principle approval' from ORIC on your proposed rule book and made no further changes, ORIC will check:

- you didn't make further changes to the rule book after ORIC gave in-principle approval
- there is evidence that a special resolution to change the rules was proposed and members passed it.

If these things are okay, ORIC will make a decision to approve and register the rule book and let the corporation know.

As soon as it is registered, the new rules take effect. **FINISHED**

If you made further changes to your rule book after ORIC gave in-principle approval or you didn't get in-principle approval, ORIC will:

- assess the rule book to ensure it meets the requirements of the CATSI Act
- check for evidence that a special resolution to change the rules was proposed and members passed it.

ORIC will make a decision to either:

- approve and register the rule book—at which point it starts to apply to the corporation **FINISHED**
or
- disapprove the changes and tell the corporation why—in which case the RNTBC will need to consider any feedback from ORIC on how the lodgement fell short of the requirements and what it needs to do.

RETURN TO STEP 1 OR STEP 3

Terminology ORIC sometimes get asked about...

PBC is short for 'prescribed body corporate'. 'Prescribed' means officially appointed. 'Body corporate' means a corporation.

In the native title context, a group claiming native title nominates a corporation to hold and manage (as trustee) or manage (as agent) their native title rights and interests when that group has succeeded in having their native title recognised in a Federal Court determination. They call it their prescribed body corporate or PBC.

A PBC does not begin to manage native title rights until after the Federal Court makes a determination that native title rights and interests exist and orders the PBC to be the trustee or agent for the common law holders of those native title rights and interests. After the court makes that order, the National Native Title Tribunal enters the determination on the National Native Title Register. At this point the PBC becomes a **'registered native title body corporate' (RNTBC)**. However, many people continue to call them PBCs.

Common law holders are the people described in a determination of native title as the native title holders. Some native title determinations list individuals. Some determinations refer to descendants from named people. Some determinations name a particular tribe, clan or family, a language group or other estate group.

RNTBC members are the people who have applied to become a member of the corporation—following the process in its rule book—and had their application approved by the directors and their name added to the register of members kept by the corporation.

A person who is a common law holder under the determination will not automatically become a member of the associated RNTBC. Common law holders who are not members of the RNTBC must apply to become a member in the way the rule book requires.

A common law holder does not have to be a member of the RNTBC—their native title rights and interests are equally important even if they are not a member of the RNTBC. The person has the same say about native title decisions and compensation applications as a common law holder who is also a member of the corporation.

What does a good rule book look like?

A good rule book:

- is **simple and clear**, and has the rules you need and nothing more—it's no good having a rule book that people can't understand and follow
- is **carefully tailored** to suit how the corporation operates and reflect the group's traditional decision-making values and practices
- is **regularly adjusted** to help the corporation operate efficiently and effectively, and keep up with changes within its operating environment or what it aims to do.



CONTACT ORIC

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NOTE: This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act, native title laws or consult a lawyer.