# The rule book of(insert corporation name)

# ICN (insert ICN)

This rule book complies with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006.*

Contents

[1. Name 3](#_Toc99467596)

[2. Interpretation 3](#_Toc99467597)

[3. Objectives 5](#_Toc99467598)

[4. Powers of the corporation 6](#_Toc99467599)

[5. Members 7](#_Toc99467600)

[6. General meetings and AGMs (members meetings) 14](#_Toc99467601)

[7. Directors 21](#_Toc99467602)

[8. Advisory committees 31](#_Toc99467603)

[9. Contact person or secretary 31](#_Toc99467604)

[10. Native title functions 32](#_Toc99467605)

[11. Making a native title decision 32](#_Toc99467606)

[12. Standing instructions decision 34](#_Toc99467607)

[13. Making a native title compensation application 35](#_Toc99467608)

[14. Records of consultation and consent 36](#_Toc99467609)

[15. Records about the corporation and finances 36](#_Toc99467610)

[16. Finances 37](#_Toc99467611)

[17. Trust account 37](#_Toc99467612)

[18. Application of funds 37](#_Toc99467613)

[19. Giving benefits to a related party 38](#_Toc99467614)

[20. Dispute resolution 38](#_Toc99467615)

[21. Confidentiality requirement 41](#_Toc99467616)

[22. Winding up 42](#_Toc99467617)

[23. Changing this rule book 42](#_Toc99467618)

[Schedule 1—Application for membership form 44](#_Toc99467619)

[Schedule 2—Consent to become a director form 45](#_Toc99467620)

[Schedule 3—Nomination to serve as a director form 46](#_Toc99467621)

[Schedule 4—Appointment of a proxy form 48](#_Toc99467622)

[Schedule 5—Native title claim group 49](#_Toc99467623)

[Schedule 5A—Common law holders 50](#_Toc99467624)

[Schedule 6—Common law holder sub-groups 51](#_Toc99467625)

[Schedule 7—Determination[s] 52](#_Toc99467626)

[Schedule 8—Notice of native title dispute 53](#_Toc99467627)

[Schedule 8A—Reply to notice of dispute 55](#_Toc99467628)

[Schedule 9 – Native title decision-making process[es] 57](#_Toc99467629)

## Name

Once a corporation has become an RNTBC it must include the words registered native title body corporate or the abbreviation RNTBC as part of its name—CATSI Act s. 85-1(4).

The name of the corporation is (insert corporation name).

## Interpretation

### Dictionary

**Affected common law holders** means the common law holders whose native title rights and interests are affected by a proposed native title decision.

**Business days** means Monday, Tuesday, Wednesday, Thursday and Friday, and does not include any of these days when they are a public holiday.

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

**Certificate in relation to consultation and consent** means a certificate prepared in accordance with regulation 9 of the PBC Regulations.

**Common law holder** means an individual who is a member of the people described in schedule 5A and the plural means all of these individuals unless otherwise described.

**Common law holder sub-group** means a sub-group of common law holders described in schedule 6.

**Compensation application** means an application to the Federal Court for compensation under sections 50(2) and 61 of the Native Title Act.

**Corporation** means [insert name of corporation].

**Determination** means a native title determination made by the Federal Court and listed at schedule 7.

**Determination area** means the area in which the common law holders’ native title rights and interests have been determined to exist.

**Director ID** means a director identification number provided under section 308-5 of the CATSI Act.

**Expert determination** means a process to come to a decision or recommendation made by a subcommittee, elders council or similar as a resolution to a native title dispute.

**Grantee party** means the person who has requested or applied for the doing of an act by the commonwealth, a state or a territory under section 29(2)(c) of the Native Title Act

**High level decision** meansa decisionto**:**

* surrender native title rights and interests in relation to land or waters
* enter into an ILUA or a right to negotiate agreement
* allow a person who is not a common law holder to be a member of the corporation, or
* adopt one or more processes for consulting common law holders in the corporation’s rule book.

**ILUA** means an Indigenous land use agreement in relation to the land or waters of all or part of a determination area.

**Low level decision** means a native title decision that is not a high level decision.

**Native Title Act** means the *Native Title Act 1993*.

**Native title claim group** means the people listed in schedule 5.

**Native title decision** means a decision to

* surrender native title rights and interests in relation to land or waters
* enter into an ILUA or a right to negotiate agreement
* allow a person who is not a common law holder to be a member of the corporation
* adopt one or more alternative consultation processes in the registered native title body corporate’s rule book, or
* do, or agree to, any other act that would affect the native title rights or interests of the common law holders (other than a decision to make a compensation application).

**Native title representative body (NTRB)**/**native title** **service provider (NTSP)** means a native title representative body or a native title service provider appointed to perform the functions of a native title representative body under the Native Title Act.

**Prescribed body corporate** means a corporation that is registered under the CATSI Act for the purpose of being the subject of a determination of the Federal Court under section 56 or section 57 of the Native Title Act.

**Procedural rights** means a right under the Native Title Act in relation to an act, which is:

* a right to be notified of the act
* a right to object to the act or
* any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.

**Registered native title body corporate** (RNTBC) means a prescribed body corporate that has been registered with the National Native Title Tribunal in relation to a determination.

**Registrar** means the Registrar of Aboriginal and Torres Strait Islander Corporations.

**Right-to-negotiate agreement** means an agreement made under section 31 of the Native Title Act in relation to the land or water subject to the whole or part of a determination area.

**Schedule** means a schedule to this constitution unless otherwise identified.

**Specified person** means:

* if the compensation application relates to an entire determination area, all of the common law holders included in a determination about which a compensation application is made, or
* if the compensation application relates to the native title rights and interests of certain classes of common law holders identified in a determination, only those classes of common law holders

**Standing instructions decision** means a [native title decision](http://classic.austlii.edu.au/au/legis/cth/consol_reg/ntbcr1999495/s3.html#native_title_decision) that is:

* a l[ow level decision](http://classic.austlii.edu.au/au/legis/cth/consol_reg/ntbcr1999495/s3.html#low_level_decision); or
* a decision to enter an ILUA under Subdivision B, C or D of Division 3 of Part 2 of the Native Title Act so something can be done by or for the corporation, or
* a decision to form an agreement under Subdivision P of Division 3 of the Native Title Act if the corporation is the only grantee party.

## Objectives

The objectives must say that the corporation is established to become an RNTBC and carry out the functions of an RNTBC.

The objectives must also say if the RNTBC will act as trustee or agent for the common law holders.

An RNTBC may limit its objectives to managing native title or it may include broader objectives such as supporting the community or commercial activities. Alternatively, it could choose to set up other corporations to pursue the other objectives.

The objectives of the corporation are to assist in the relief of poverty, sickness, destitution, helplessness, distress, suffering, and misfortune, among the common law holders through the process of supporting their cultural, social, political, economic and legal interests.

The corporation will seek to achieve its objectives through activities such as:

* recognising the common law holders as the traditional owners of the determination area
* protecting, preserving and celebrating the traditions, laws, languages, special knowledge, culture and customs of the common law holders
* ensuring that local areas of importance to the common law holders are respected and that the history of those areas is preserved and promoted
* providing services and facilities to support culture, education, training, employment, health care, transport, communication and land maintenance
* acquiring land and water through native title claims, purchases and other such activities
* holding, maintaining and using land vested in or transferred to it through other land rights regimes
* seeking investment and commercial opportunities
* before determination, carrying out the functions of a prescribed body corporate
* becoming a registered native title body corporate and carrying out its functions.

After determination the corporation aims to:

Will the native title rights and interests be held on trust or will the corporation act as agent? Delete whichever of the following points that does not apply.

* hold native title rights and interests on trust for the common law holders in relation to the determination(s).
* act as agent for the common law holders in relation to the determination(s).

## Powers of the corporation

Subject to these rules, the CATSI Act, Native Title Act and their regulations, the corporation has the power to do all things lawful to carry out its objectives.

## Members

Direct or indirect membership?

An RNTBC must decide if membership will be open to all common law holders identified in the determination of native title (direct representation membership model), or whether a smaller or set number of individuals can be appointed to represent common law holders (indirect representation membership model).

Delete the version of rules 5.1 and 5.2 that do not apply to your membership model.

### Membership model

The corporation will have a direct representation membership model. Every individual person who meets the eligibility criteria can apply and become a member.

### Membership eligibility

Age of members

You can make the minimum age higher if you want. The lowest age allowed is 15 years old.

Who is the native title claim group?

The definition of the native title claim group should be the same as the native title claim group in the application for a determination of native title.

Who are the common law holders? (What does the determination say?)

The description or definition of the common law holders must be exactly the same as the description in the native title determination(s).

Other members?

The Native Title (Prescribed Bodies Corporate) Regulations 1999 (Native Title PBC Regulations) require that the membership be restricted to persons:

* who are common law holders under the determination—section 4(2)(c)(i), or
* that the common law holders have agreed to allow as members—section 4(2)(c)(ii).

This means a registered native title body corporate cannot allow members who are not common law holders or corporate members unless it consults with the common law holders about allowing non-common law holders to become members and gets their consent. This is a native title decision.

You will need to adjust this rule if the common law holders have decided to allow other people to become members or corporate members. If the common law holders decide to allow non-Indigenous people as members, a majority of members must be Aboriginal or Torres Strait Islander people.

Before the determination is made, a person is eligible to be a member of the corporation if the person is:

* at least 15 years old, and
* a member of the native title claim group (see schedule 5)

After the determination is made, a person is eligible to be a member of the corporation if the person is:

* at least 15 years old, and
* a common law holder (see schedule 5A).

You may wish to allow people who are not common law holders to become members of the corporation. To do so, you can use the rule below instead of the rule above. You can also add more eligibility criteria for those members.

After the determination is made, a person is eligible to be a member of the corporation if the person is:

* at least 15 years old, and
* either:
	+ a common law holder (see schedule 5A), or
	+ a person whom the corporation decides may become a member by making a native title decision.

### Membership model

The corporation will have an indirect representation membership model. An individual person who is a common law holder is represented by a member or members of the corporation.

In an indirect representation membership model the rules about the structure and process must allow all common law holders to be properly represented by the people or entities who are appointed to be members of the corporation. If you adopt an indirect representation model of membership, you will need to ensure that the membership will represent all common law holders.

### Membership eligibility

There will be XX members for each common law holder sub-group.

OR

There will be XX members of the corporation. There will be the following number of members from each common law holder sub-group:

* sub-group A = X members
* sub-group B = X members
* sub-group C = Y members

Before the determination is made, a person is eligible to be a member of the corporation if:

* the person is at least 15 years old,
* the person is a member of the native title claim group (see schedule 5), and
* the maximum number of members for that person’s sub-group is not exceeded.

After the determination is made, a person is eligible to be a member of the corporation if:

* the person is at least 15 years old,
* the person is a common law holder (see schedule 5A), and
* the maximum number of members for that person’s sub-group is not exceeded.

If your corporation wishes to allow people who are not common law holders to become members of the corporation, you can add the rule below after the rule above. You can also add more eligibility criteria for those members.

A person who is not a common law holder is eligible to become a member of the corporation if:

* the person is at least 15 years old, and
* the corporation decides the person may become a member by making a native title decision.

### How to become a member

A person applies in writing using the application for membership form at schedule 1 of this rule book.

A person must be eligible under rule 5.2.

The directors must consider all applications for membership within a reasonable period after they are received.

The directors must, by resolution at a directors’ meeting, accept a membership application if the applicant:

* applies for membership in the required manner, and
* meets the eligibility for membership requirements under rule 5.2.

If the directors accept the application, the corporation must enter the person on the register of members. This must be done within 14 days of the directors accepting the application. The person does not become a member until the corporation enters the person on the register of members.

If the directors do not accept the application, the corporation must notify the applicant in writing of the decision and the reasons for it. This must be done within 14 days of the directors’ decision.

If a person applies for membership after a notice has been given for the holding of a general meeting, including an AGM, and the meeting has not been held at the time the directors consider the person’s application for membership, the corporation must wait until after the general meeting has been held before adding the person to the register of members.

If you have an indirect representative membership model you will need to change the rule above to reflect the process for each sub-group to choose its representative member(s). There are lots of ways members might be chosen, and this would reflect the tradition and circumstance of the native title claim group/common law holders.

In most cases, a sub-group selects their members through a process run by the group. In smaller sub-groups, members may be informally nominated by agreement. For larger sub-groups where there may be multiple candidates, set out the process clearly so that everyone understands the eligibility requirements, how to apply and how that decision will be made, including who has the final say in the selection.

Example rule for an indirect membership model:

Each common law holder sub-group will meet and elect xx persons/the appropriate number of persons [delete whichever does not apply] before the first AGM of the corporation.

When a person ceases to be a member, there is a vacancy in the membership.

A person can apply at any time to become a member by:

* providing the information required in the form at schedule 1, and
* identifying which sub-group they are applying to represent.

If a vacancy in the membership arises, the corporation will:

* give notice to the relevant sub-group that the vacancy has arisen
* invite eligible people to nominate for vacated membership
* contact people who have already applied to become a member to confirm they are still interested
* assist the relevant sub-group to convene a meeting to conduct an election to select new members.

If the person applies in the manner required by this rule, the directors must accept the membership application.

The directors must add the person’s information to the register of members within 30 days of the sub-group’s decision.

The corporation must provide ORIC an updated membership list within 28 days of the new member being added.

If you’re using an indirect representative membership model, consider if you want people to hold their membership until one of the events listed in the CATSI Act occurs (in which case the rule above is fine) or if you want to have fixed terms e.g. for a period of 3 or 4 years (below is an example rule if you want to have fixed terms).

Members are appointed for a term of 3 years.

Members must retire at the end of the third AGM after they take office.

Members are eligible to be re-elected by their sub-group.

For members who have been appointed to fill a membership vacancy, their membership expires when the vacated membership would have expired.

### Members’ rights

A member can:

* attend, speak and vote at general meetings
* be made a director (if the member is eligible to become a director—see rule 7.3 on eligibility of directors)
* put forward resolutions at general meetings, including under rule 6.6
* can ask the directors to call a general meeting under rule 6.3
* look at the register of members free of charge
* look at the minutes of general meetings and AGMs free of charge
* look at the rule book or get a copy free of charge
* raise a dispute and have a dispute dealt with using rule 20
* look at the books of the corporation if the directors have authorised it or the members pass a resolution at a members’ meeting that approves it.

### Members’ responsibilities

A member must:

* follow the corporation’s rules
* let the corporation know within 28 days if they change their address or other contact details
* treat other members and common law holders with respect
* comply with any code of conduct adopted by the corporation, including any traditional law and custom of the native title claim group/common law holders described in that document
* not behave in a way that significantly interferes with the operation of the corporation or its meetings
* make their best efforts to attend general meetings (including AGMs) or give their apologies.

### Members not to make public comment

No member may make any public statement on behalf of the corporation except in accordance with any agreed policy or procedures approved by the directors.

### No membership fee

You can change this rule to charge a membership fee if you want.

The members of the corporation are not required to pay fees to join or for ongoing membership of the corporation.

### Liability of members

The members do not have to pay the corporation’s debts if the corporation is wound up.

### How to stop being a member

A person may stop being a member because:

If the corporation has an indirect representation membership model with fixed term membership, it may need to include expiry in the provisions for ending membership i.e.

 • the term of their membership expires

* they resign in writing
* they pass away
* their membership is cancelled in accordance with rule 5.10 or 5.11.

Within 14 days of one of these things happening, the corporation must:

* remove the person’s name and address from the register of members
* put the person’s name, address and the date they stopped being a member on the register of former members.

The person stops being a member when their name is removed from the register of members as a current member of the corporation.

### Cancelling membership

A person’s membership can be cancelled by members passing a special resolution at a general meeting if the member:

* cannot be contacted for 2 years
* is not an Aboriginal and Torres Strait Islander person (if this is required for a person to be eligible for membership)
* misbehaves (has behaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings).

The directors must give the member notice of the cancellation of membership at the member’s last known address as soon as possible after the resolution is passed.

### Directors limited right to cancel membership

If a member is not, or stops being, eligible for membership as set out in rule 5.2, or has not paid the member’s membership fees (if any), the member’s membership can be cancelled by the directors passing a resolution at a directors’ meeting.

To do this, the directors must:

* write to the member to tell them:
	+ the directors are going to cancel their membership
	+ they have 14 days to object to the planned cancellation
	+ if the member objects, they must write to the corporation to say so
* allow the member 14 days to object in writing to the intended cancellation.

**If the member does not object**, the directors must cancel the membership by passing a resolution at a directors’ meeting. Then they must give the former member a copy of the resolution.

**If the member objects**, the directors cannot cancel the membership. The membership can only be cancelled by members passing a resolution at a general meeting.

Before the directors try to remove a member under this rule, they must take reasonable steps to make sure the member is not, or has stopped being, eligible under rule 5.2.

### The register(s) of members and former members

The register(s) must contain:

* the names and addresses of members and former members
* the date when each person’s name was added to the register
* if a person is non-Indigenous (if rule 5.2 allows people who are neither Aboriginal nor Torres Strait Islander to be members)
* for former members, the date when the person stopped being a member.

The register(s) of members and former members must be kept at the corporation’s document access address or, if it is a large corporation, its registered office.

The register of members must be made available at the AGM.

You can keep the details of your corporation’s members and former members in separate registers or in one register. If you keep one register, you must make sure that it clearly identifies who is a current member and who is a former member.

It is also a good idea to identify each member’s sub-group on the register of members.

## General meetings and AGMs (members’ meetings)

### AGM timing

An AGM must be held before the end of November each year unless the registrar provides an exemption from holding the meeting or extends the period within which the corporation is required to hold it.

### AGM business

AGM business includes:

* checking the register of members
* consideration of the reports that under chapter 7 of the CATSI Act are required to be laid before the AGM
* confirming the minutes of the previous general meeting
* asking questions about how the corporation is managed
* electing directors (if required)
* choosing an auditor (if required) and agreeing on their fee.

### Calling general meetings

The directors can call a general meeting or AGM by passing a resolution in a directors’ meeting or by a circulating resolution.

The required number of members can request the directors to call a general meeting.

Number of members Number of members

in corporation required to ask for a general meeting

2 to 10 members = 1 member

11 to 20 members = 3 members

21 to 50 members = 5 members

51 members or more = 10 per cent of members

The members’ request must:

* be in writing
* state any resolutions to be proposed at the meeting—see rule 6.6
* be signed by the members making the request
* nominate a member to be the contact member on behalf of the members making the request
* be given to the corporation.

Within 21 days of receiving the request, the directors must either call the meeting or apply to the registrar to deny the request.

#### Directors agree to the request

If the directors agree to the members’ request they must call the general meeting within 21 days of receiving it.

#### Directors apply to the registrar to deny the request

If the directors resolve that:

* the request is frivolous or unreasonable or
* complying with the request would be contrary to the interests of the members as a whole,

a director, on behalf of all the directors, may apply to the registrar for permission to deny the request to call a general meeting.

The directors’ application to the registrar to deny the members’ request must:

* be in writing
* set out the reasons why the directors have decided that:
	+ the request is frivolous or unreasonable, or
	+ complying with the request would be contrary to the interests of the members as a whole
* be made within 21 days after the members’ request for a meeting was made.

The directors must give notice to the contact member that they have applied to the registrar to deny the request.

### General meeting business

General meeting business includes:

* confirming the minutes of the previous general meeting
* considering the business or resolutions in the notice of the meeting.

### Notice for general meetings and AGMs

At least 21 days’ notice must be given.

The notice must be given to:

* each member individually
* the directors
* the contact person or secretary
* the auditor (if the corporation has one).

The notice for each general meeting must set out:

* the place, date and time for the meeting
* the business of the meeting
* if a special resolution is being proposed, the exact wording of it
* if technology may be used to attend the meeting from other places
* if a member may appoint a proxy.

Notices must be given to each member individually. This can be done by sending by post to their address, fax, email or social media. In addition to individual notice a corporation can also give notice in a manner that follows Aboriginal or Torres Strait Islander custom.

A notice of meeting:

* sent by post is taken to be given 3 days after it is posted
* sent by fax or other electronic means is taken to be given on the business day after it is sent.

You may add other notice requirements—for example, local newspaper advertisements, radio broadcasts, social media or community noticeboards.

### Members’ resolutions

The required number of members can propose a resolution by giving notice of it to the corporation.

Number of members Number of members required to

in corporation propose a resolution

2 to 10 members = 1 member

11 to 20 members = 3 members

21 to 50 members = 5 members

51 members or more = 10 per cent of members

The notice must set out the resolution in writing and must be signed by the members proposing it.

The corporation must give notice of the resolution to all people entitled to it in the same way as rule 6.5.

The corporation must consider the resolution at the next general meeting that is being held more than 28 days after the notice from the members has been given to the corporation.

### Quorum at general meetings and AGMs

You can replace this rule with one that better suits your corporation’s circumstances, however that rule must be adequate and workable in the circumstances of your corporation to comply with the internal governance rules requirements of the CATSI Act. A quorum rule that is adequate is a rule that the registrar thinks will makes sure that there are enough members present to represent all members of the corporation.

If you have an indirect representation membership model consider replacing this rule with one that requires a minimum number of representatives from each sub-group to reach quorum. However, if you adopt this kind of rule, you should also consider what might happen if members or particular sub-groups deliberately avoid attending meetings to interfere in the corporation’s business.

Number of members in Number of members to
corporation make a quorum

2 to 29 members = 2 members

30 to 99 members = 10 per cent of members

100 members or more = 10 members

The quorum must be present during the whole meeting.

If there is no quorum after one hour from the time the meeting was scheduled to start, the meeting is adjourned until the next week at the same time and at the same place, unless the directors specify otherwise.

If the meeting is adjourned, the directors must take reasonable steps to inform members of the adjournment and details of the adjourned meeting.

If there is still no quorum at the adjourned meeting, the meeting is cancelled.

#### How to count the quorum

To work out if there is a quorum:

* count each member present at the meeting (if a member also holds a proxy, that member is only counted once)
* if rule 6.13 allows a non-member to hold a proxy for a member, count each non-member present at the meeting holding a proxy (if the non-member proxy holder holds more than one proxy, the non‑member is only counted once)
* if rule 6.13 allows proxies and a member has appointed more than one proxy and each of those proxy holders are at the meeting, count only one of them
* if rule 6.13 allows proxies and a member has appointed one or more proxies and the member is also present at the meeting, do not count the member’s proxy holders.

### Postponing a general meeting or AGM

After notice has been given for a general meeting or AGM the directors can decide to postpone the meeting (this means, delay or reschedule the meeting for a later date) if there are exceptional reasons for doing so (such as the death of a community person or a natural disaster).

You can add a list of the circumstances where the directors have the power to postpone a meeting.

The directors postpone the meeting by passing a resolution in a directors’ meeting. A postponed meeting must be held within 30 days of the date that the meeting was due to occur.

The directors must give reasonable notice of the postponement and give each member a notice of the postponed meeting setting the new date, time and place.

You can add other requirements for the notice of the postponed meeting.

### Chairing general meetings and AGMs

The chairperson (if there is one) of the corporation will chair general meetings. If the chairperson is not available or there isn’t one, the members must elect someone to chair the meeting.

### Using technology at general meetings and AGMs

General meetings and AGMs can be held at more than one place using any technology that gives members a way of taking part but the type of technology to be used must be set out in the notice of meeting.

### Voting at general meetings and AGMs

Each member has one vote.

The chairperson of the meeting has one vote (if they are a member) plus a casting vote.

You can change this rule to remove the casting vote, if that is what the members want.

A challenge to a right to vote at a meeting may only be made at the meeting and must be determined by the chairperson of the meeting, whose decision is final.

A resolution is decided by majority on a show of hands unless a poll is demanded under rule 6.12. The chairperson tells the meeting whether they have received any proxy votes and how they are to be cast.

The chairperson declares the results of the vote, on a show of hands or when a poll is demanded.

### Demanding a formal count (i.e. a poll)

Either the chairperson or any member entitled to vote on the resolution can demand a poll. A poll is a formal count of votes.

A poll can be held instead of, or immediately after, a vote decided by a majority on a show of hands.

A poll demanded on any matter must be taken immediately. The chairperson of the meeting directs how the poll will be taken.

### Proxies at general meetings and AGMs

If you do not want your corporation to have proxies, you can replace this rule to say: Proxies may not be appointed to attend or vote for members at general meetings.

Members can appoint another member as their proxy to attend a meeting and vote for them using a proxy appointment form at schedule 4.

A proxy appointment form must contain the member’s name and address, the corporation’s name, the proxy’s name, the meeting that the proxy is to attend, and the member’s signature

A person appointed by a member as their attorney under a power of attorney may not give a proxy to another member or person to attend meetings and vote for them.

You can change this rule to allow a non-member to be appointed as a proxy.

If you allow non-members to be appointed as proxies, you should also include a rule ‘Proxies can also speak at meetings and join in demanding a poll.’

The corporation must receive a completed appointment proxy form at least 48 hours before the meeting for the proxy to be able to attend the meeting and vote.

A person must not be a proxy for more than one member.

You can change the number of proxy votes that a person can hold. The maximum number allowed under the CATSI Act is 3.

Check what your current rule book says or discuss it with your sub-group.

### Other people at general meetings and AGMs

You can delete this rule if you do not wish other people to attend meetings.

If you want to be able to allow other people to attend a meeting, you can give the chairperson the power to make this decision or you can give the power decide this to the members who attend the meeting.

The chairperson or members voting as a group may allow any person (excluding a person with power of attorney) other than a corporation director, member, proxy (if proxies are allowed) or auditor to attend general meetings and AGMs. But the person cannot propose or vote on resolutions.

### Auditor’s right to be heard at a general meeting

If the corporation has an auditor, the auditor is entitled to attend any general meeting of the corporation.

The auditor is entitled to be heard at the meeting on any part of the business of that meeting that concerns the auditor in their professional capacity.

The auditor is entitled to be heard even if:

* the auditor retires at the meeting, or
* that meeting passes a resolution to remove the auditor from office.

The auditor may authorise a person in writing as the auditor’s representative for the purpose of attending and speaking at any general meeting.

## Directors

### Role of directors

The directors oversee the running of the corporation on behalf of all members, make decisions about the affairs of the corporation, and should always be aware of what the corporation and its employees are doing. The directors manage, or set the direction for managing, the business of the corporation.

The directors may exercise all the powers of the corporation except any that the CATSI Act or this rule book requires the corporation to exercise in a general meeting.

### Number of directors and composition of board

The example rule below is a basic composition with 2 types of directors—member and independent.

You can change your rule about directors but remember if you want fewer than 3 or more than 12 directors (including independent or specialist non‑member directors) you need to apply for an exemption from the number of directors requirement.

The number of directors of the corporation is [insert number up to 12].

This number includes up to [insert number] independent or specialist non-member directors.

You can add rules to provide for different sub‑groups or determinations to be represented by directors.

The rules below are examples of how you can do this. You can choose one of these, delete them all or create a rule to suit your corporation

Example 1: Provide for every sub‑group to be represented equally where you have lots of sub‑groups that need representing

At least one director from each sub‑group must be appointed.

There must be no more than 2 directors from each sub-group at any time.

Example 2: Provide for every sub‑group to be represented differently.

The board will have the following number of directors for each sub‑group/determination:

Sub-group Number of directors

[insert] [insert]

[insert] [insert]

[insert] [insert]

[insert] [insert]

Example 3: Provide an allocation for each determination

There must be at least 3 and no more than 5 directors appointed from the common law holders of each determination.

Example 4: Provide for minimum inclusion of determinations but less specific on quotas

There must be directors from [both/all/at least 2/each] of the sub‑groups/determinations.

### Eligibility of directors

A director must:

* be at least 18 years old
* be a member of the corporation, unless appointed under rule 7.8

Extra criteria to consider for director ID

Below is an example of extra criteria you may choose to add to take additional steps to ensure that directors meet their obligations to have a director ID:

* have a director ID or have applied for a director ID and give the corporation their director ID as soon as they have it.

Extra criteria to consider depending on membership eligibility

If the common law holders decide to allow people who are not common law holders to become members, you may want to consider adding a rule to require directors appointed under this rule to be only Aboriginal or Torres Strait Islander people or only common law holders (optional).

Remember – the majority of directors must always be:

* members
* Aboriginal or Torres Strait Islander people.

Below are examples of extra criteria for directors’ eligibility that you may like to add:

* people who belong to a particular sub-group
* people who usually live in a particular community or region or within the determination area and have lived there for at least X months (e.g. 6 or 12 months)

Extra criteria to consider for skills

The dot points below are also examples of extra criteria that you can delete or change. These criteria are important to consider if you choose a representative model. Remember: the responsibilities and duties of directors are the same for every individual director. Although the board does its work as a group, each director is personally responsible.

* have skills relevant to the governance, business or activities of the corporation, such as law, accounting, cultural knowledge and lore or business administration, and
* have completed suitable governance training or undertake to do so as soon as possible following their appointment.

Extra criteria to restrict who can become a director

The CATSI Act disqualifies certain people from becoming directors. The following dot points are in the CATSI Act and apply regardless if you include them in your rules or not.

A person is not eligible to become a director if the person is disqualified under the CATSI Act from managing corporations. Disqualification happens when a person:

* has been convicted of an offence under the CATSI Act that is punishable by imprisonment for more than 12 months
* has been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
* has been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
* is an undischarged bankrupt
* has signed a personal insolvency agreement and has not kept to the agreement
* has been otherwise disqualified under the CATSI Act or the *Corporations Act 2001* from managing corporations.

The dot points below are examples of extra criteria not in the CATSI Act but might be suitable for your corporation:

* owes more than $2,500 to the corporation
* is an employee of the corporation.

### Majority of director requirements

A majority of directors must be:

* individuals who are common law holders
* members of the corporation

If in rule 7.3 you deleted the dot point saying that employees cannot be directors, then you need to include in this rule an extra point to say the majority: ‘not be employees of the corporation’

* usually reside in Australia.

The majority residing in Australia is set law under the CATSI Act. You can narrow this requirement by specifying a smaller region within Australia such as the Northern Territory, the Torres Strait or the determination area.

### How to become a director (member director)

The following is an example rule if you want to include a written nomination process for directors. Completing a nomination form may not be practical in all corporations so you may consider replacing that step with a process suited to your circumstances.

You can also set a deadline for a nomination form to be received by the corporation, such as one week before the meeting.

To be eligible for election, a member must:

* complete a ‘Nomination to serve as a director form’ (provided at schedule 3)
* complete a ‘Consent to become a director’ form (provided at schedule 2)
* give both forms to the corporation.

If your rules say that certain director positions represent certain sub-groups you may consider changing the process below for appointing directors at the general meeting. For example, you could say that only members from relevant sub-groups participate in elections or another process to decide who the directors will be. The process must include the members passing a resolution to appoint the directors.

The corporation can appoint a director at the general meeting or AGM by:

* presenting nominations to members
* holding a vote or ballot on the nominated directors
* members passing a resolution.

If there is a casual vacancy in a directorship the process to fill it is at rule 7.9.

### Appointing alternate directors

This rule is useful when a director cannot attend one or more directors’ meetings for a while, for example because they are having medical treatment.

You do not have to allow for alternate directors. If you don’t want alternate directors delete this rule.

With the other directors’ approval, a director (appointing director) may appoint an alternate director to exercise some or all of the appointing director’s powers for a specified period instead of the appointing director.

If the appointing director asks the corporation to give the alternate director notice of directors’ meetings, the corporation must do so.

The appointing director may terminate the alternate director’s appointment at any time.

Any appointment or its termination must be in writing. A copy must be given to the corporation.

To be appointed as an alternate director, a person must give the corporation their consent in writing to become an alternate director.

An alternate director must give the corporation their director ID as soon as possible after they are appointed.

You may wish to place restrictions on who may be appointed as an alternate director. Choose one of the rules below to suit the needs of your corporation. Delete all the rules below if they are not important.

An alternate director must be from the same sub-group as the director they are appointed to act for.

OR

There may only be one alternate director from each sub-group at any time.

OR

There may be up to [insert number] alternate directors from each sub-group at any time.

### Directors’ terms of appointment and rotation

Directors (other than those appointed under rule 7.8 or rule 7.9) are appointed for a term of 2 years. They must retire at the end of the second AGM after they take office. They are eligible to be re-elected.

For directors appointed at the AGM there is a rotation system, so that half the directors must retire at each AGM. They are eligible to be re-elected.

To implement the rotational system:

* Half the member directors appointed at the time these rules are approved will only hold office until the next AGM and must retire. They are eligible to be re‑elected.
* The directors will agree on which directors retire at the AGM. If the directors cannot agree, they must decide by lot conducted by the directors.
* At every subsequent AGM those directors that did not retire at the previous AGM must retire. They are eligible to be re-elected.
* Newly elected directors have a term of 2 years, which ends at the second AGM after they take office. If a director is replaced during their term, the replacement director holds office for the remainder of the replaced director’s term.
* The minutes of the general meeting must record the term of each director appointed.

If, despite the operation of section 246‑25(4) of the CATSI Act, the terms of all directors expire so that there are no directors appointed at a particular time, the directors holding office immediately before the expiry will continue to hold office until the members appoint new directors or reappoint the existing directors by resolution at a general meeting.

### Appointing independent or specialist non-member directors

Having directors with certain skills or independence is encouraged to help make your board a strong team. Many people mistakenly think these directors must be non‑Indigenous but that’s not true. If you don’t want directors to appoint an independent or specialist non-member director, delete this rule.

Independent or specialist non-member directors may be selected because they are independent or have skills in financial management, corporate governance, accounting, law or a field relating to the corporation’s activities.

The directors may appoint independent or specialist non-member directors by passing a resolution in a directors’ meeting.

Before being appointed as an independent or specialist non-member director, the person must give the corporation their written consent to become a director and their director ID.

Independent or specialist non-member directors are appointed for the term specified by the directors in their appointment. Independent or specialist non-member directors can be appointed for a term of one year and they can be reappointed.

### How to fill casual vacancies

If you do not want directors to fill casual vacancies, you must delete this rule. If you delete this rule, it means that a vacancy can only be filled by members passing a resolution at a general meeting.

A casual vacancy arises when a person stops being a director before their term of appointment expires (see rule 7.10) and so the position of that director is vacant.

The directors can appoint a person as a director to fill a casual vacancy.

To be appointed, the person must meet the director eligibility criteria in rule 7.3 and the corporation must check they will not breach the requirements of rule 7.4.

A person’s appointment as director to fill a casual vacancy must be confirmed by members passing a resolution at the next general meeting otherwise the person stops being a director at the end of the general meeting.

If the person’s appointment as director is confirmed at a general meeting, the term of the appointment is for the balance of the term remaining on the vacant position.

If the quorum for a directors’ meeting is a fixed number (instead of a majority of directors) you should include the following rule:

The directors may fill a casual vacancy even if the vacancy has reduced the number of directors to less than the number required for a quorum.

### How to stop being a director

A person stops being a director if:

* they pass away
* they resign in writing
* the term of their appointment expires
* they are removed as a director by the members or the other directors
* they are disqualified from managing a corporation
* they cease to be a member (unless being a member was not a requirement for their appointment).

### How to remove a director

By the other directors:

* Directors can only remove a director if the director fails to attend 3 or more consecutive directors’ meetings without a reasonable excuse.
* Directors must give the director concerned a notice in writing and they must give the director 14 days to object in writing.
* If the director objects, they cannot remove the director. The director can only then be removed at a general meeting by the members passing a resolution.

By resolution of the members in a general meeting:

* A notice for a resolution to remove a director must be given to the corporation at least 21 days before the next general meeting or AGM. (Alternatively, the members can request a meeting (rule 6.3) for the purpose of removing a director.)
* The corporation must give the director concerned a copy of the notice as soon as possible.
* The director can give the corporation a written statement and speak at the meeting. The statement must be given to everyone entitled to notice of the meeting (see rule 6.5).

### Notifying the registrar of director changes

Whenever a person becomes or stops being a director (member or independent/specialist) or alternate director, the corporation must notify the registrar within 28 days.

Delete ‘or alternate director’ in the rule above if your corporation does not have them.

### Duties of directors and officers

The CATSI Act sets duties for directors which are:

* a duty of care and diligence
* a duty of good faith and to act in the best interests of the corporation
* a duty not to improperly use position or information
* a duty to disclose a conflict of interest (material personal interest)
* a duty not to trade while insolvent.

Officers of the corporation must uphold the duties of care and diligence, good faith, and not to improperly use their position or information.

A director or officer must act in good faith when doing anything to ensure the corporation complies with its native title legislation obligations.

### Conflict of interest

A director who has, or thinks they may have, a conflict of interest in a corporation matter must tell the other directors.

This includes, but is not limited to, a material personal interest or other personal benefit (e.g. direct benefit from the outcome of a resolution) such as:

* business opportunity(s)
* transfer of interests in land
* providing goods or services to the corporation or others for money or other benefit
* receiving goods, services or benefits from the corporation or any other party on request of the corporation.

The director must give details of what the interest is and how it relates to the corporation. These details must be given at a directors’ meeting as soon as possible and must be recorded in the minutes of the meeting.

A director who has a conflict of interest must not:

* be present at the directors’ meeting while the matter in question is being considered, or
* vote on the matter

unless they have been granted approval by:

* the other directors (those that do not have a conflict of interest) passing a resolution, or
* the registrar in writing.

### Payments to directors

A director cannot be paid a salary or sitting fees for their work as directors.

If the corporation wants to pay sitting fees or a stipend the members must pass a special resolution to change the rules to allow this, and the fee must be set by the members at a general meeting.

If you have changed rule 7.3 to allow employees to be directors you should insert the following to the rule below ‘Directors may be paid if they are employed by the corporation, or’:

Directors may be paid if they have a contract to provide goods or services to the corporation (so long as the director has fulfilled any duty to disclose a conflict as required by this rule book and the payment is fair and reasonable to the corporation).

The corporation may pay the directors’ travelling and other expenses for attending meetings or to do with other corporation business.

If the corporation wants to allow reimbursement of directors’ usual wages that they will miss when attending to their director role you may add a rule such as:

Example rule for reimbursement of lost wages (optional):

A director may apply to the corporation for reimbursement of wages or salary they have personally lost by attending directors’ meetings or other official directors’ functions. No more than $1,200 can be reimbursed to a director in any financial year in relation to lost wages or salary.

Payments of this nature must be approved by resolution of the other directors and can only be made if:

* the director provides sufficient evidence to the corporation to demonstrate their loss
* the corporation has the financial capacity to pay.

### Delegation of directors’ powers

The directors can pass a resolution to delegate any of their powers to:

* another director
* a committee of directors
* an employee of the corporation, or
* any other person.

The delegation must be in writing and specify the delegation period and the delegated powers.

The delegate must follow the directions of the directors when using the delegated powers. Delegates must report to directors on the exercise of their delegated power.

The exercise of the power by the delegate is as effective as if the directors had exercised it themselves. This means the directors are still responsible for what the delegate does with the powers.

### Calling and giving notice of directors’ meetings

Directors must meet at least every 3 months.

All directors must be given reasonable notice of a director’s meeting.

The directors will usually decide at a meeting when and where the next meeting will be.

A director can call a directors’ meeting by giving reasonable notice to all the other directors.

### Quorum for directors’ meetings

A majority of directors must be present at all times during the meeting.

The directors may appoint a person as a director to make up a quorum for a directors’ meeting.

### Chairing directors’ meetings

The directors must elect a director present to chair a meeting, or part of it, if:

* a director has not already been elected to chair the meeting, or
* a previously elected chair is not available, or declines to act, for the meeting or the part of the meeting.

When electing a chair, the directors must decide how long that director will be the chair (i.e. just for that meeting, or at every meeting over a certain period of time). The directors may also remove a chair (but not their appointment as a director) by a resolution of the directors.

### Using technology for directors’ meetings

Directors’ meetings can be held at more than one place using any technology, as long as all directors agree to it. The type of technology to be used may be set out in the notice for a directors’ meeting.

### Resolutions by directors

Directors pass a resolution at a directors’ meeting by a majority of votes.

* Each director (including independent or specialist non-member directors) has one vote.
* The chairperson of the meeting also has a casting vote (if required).

Directors can pass a resolution without a directors’ meeting by all directors signing a statement saying that they are in favour of it. The resolution is passed when the last person signs it.

Resolutions by directors about native title decisions can only be made after the corporation has consulted with and obtained the consent of affected common law holders by following the relevant consultation and consent process.

### Sub-committees of directors

The directors may at any time appoint a sub-committee of directors and determine the responsibilities and powers of the sub-committee.

Unless otherwise decided by the directors, a sub-committee:

* has a quorum of 3 for its meetings, unless the sub-committee resolves that a larger number shall be the quorum
* must appoint one of its members to be responsible for calling sub-committee meetings and inform the directors of the name of the responsible person.

## Advisory committees

The directors may appoint advisory committees to provide the corporation with advice and assistance.

The membership of an advisory committee may include directors, members, common law holders representing specific sub-groups and/or other persons with relevant expertise or experience.

## Contact person or secretary

Small and medium corporations have a contact person. Large corporations have a secretary.

The contact person/secretary must be at least 18 years old.

The directors appoint a contact person/secretary.

Before being appointed, the contact person/secretary must give the corporation their consent in writing to become a contact person/secretary.

The directors decide the contact person’s/secretary’s pay and terms and conditions of employment, if any.

The contact person/secretary must pass on any correspondence received to at least one of the directors within 14 days.

The corporation must send the registrar a contact person’s/secretary’s details within 28 days after they are appointed.

## Native title functions

As an RNTBC under the Native Title Act, the corporation’s functions include to:

* hold in trust, money connected with the native title rights and interests (including payments received as compensation or otherwise related to the native title rights and interests)
* invest or otherwise apply money held in trust as directed by the common law holders
* consult with, and obtain the consent of, the common law holders before making a native title decision
* perform any other function relating to the native title rights and interests as directed by the common law holders.

Without limiting these functions, to perform its functions the corporation may, on behalf of the common law holders:

* consult other persons or bodies
* enter into agreements
* exercise procedural rights
* accept notices to be given to the common law holders as required by any law of the commonwealth, a state or a territory.

If the RNTBC is to be a **trustee**, use:

* manage the native title rights and interests of the common law holders.

If the RNTBC is to be an **agent**, use:

* act as agent of the common law holders in respect of matters relating to the native title
* manage the native title rights and interests as authorised by the common law holders.

## Making a native title decision

The corporation must consult the affected common law holders before it makes a native title decision.

The corporation must not make a native title decision unless the affected common law holders have given their consent to the native title decision.

The corporation must comply with any conditions or directions that the affected common law holders impose upon their consent to a native title decision.

<choose one of the rules below on the process for making a native title decision>

If the affected common law holders are required to use a particular decision-making process under their traditional laws and customs to give their consent, you can use the rule set out below.

If there are different processes for different sub-groups or different ways of deciding whether to give consent depending on the subject of the native title decision, it might be easier to use only this rule below.

When the affected common law holders are consulted about a native title decision, the corporation must ensure that the affected common law holders use the decision‑making process that exists under their laws and customs.

OR

If the common law holders want the rule book to set out the traditional decision‑making process that they must use to give their consent under their traditional laws and customs, you can set out that process here. To make that process a rule in the rule book, the corporation must make a native title decision in accordance with the PBC Regulations.

The decision-making process that exists under the common law holders’ laws and customs is:

<insert the steps and requirements of the process here>

OR

You can use the rule below and set out the decision-making processes or requirements under the common law holders’ traditional laws and customs in schedule 9 if:

1. the affected common law holders are required to use a particular decision-making process under their traditional laws and customs to give their consent, and

2. you want the decision-making process to be confirmed in the rule book, and

3. the steps are complicated, or there are different decision-making processes for different sub-groups or types of decisions.

To set out the process in the rule book, the corporation must make a native title decision in accordance with the PBC Regulations.

The decision-making process that exists under the affected common law holders’ laws and customs is the decision-making process set out for <delete one of the following> the relevant type of decision / relevant sub-group in schedule 9.

OR

If the common law holders are not required to use a particular decision-making process under their traditional laws and customs to give their consent, you can use the following rule.

This rule allows the corporation to be flexible about the way that decisions are made by different subgroups or in different circumstances.

When the affected common law holders are consulted about a native title decision, the corporation must ensure that the affected common law holders use a process of decision-making that they agree to or adopt for the consultation or for the same kind of consultation.

OR

If the common law holders are not required to use a particular decision-making process under their traditional laws and customs to give their consent, you can set out the process that common law holders agree to use for giving their consent here. To set out the process as rule in the rule book, the corporation must make a native title decision in accordance with the PBC Regulations.

When the affected common law holders are consulted about a native title decision, the corporation must ensure that the affected common law holders use the following process of decision-making:

<insert the steps and requirements of the process here>

OR

You can use the rule below and describe the decision-making process in schedule 9 if:

1. you want the decision-making process to be described in the rule book, and

2. the affected common law holders are not required to use a particular decision‑making process under their traditional laws and customs to give their consent, and

3. the process is long and complicated, or there are different decision-making processes for different sub-groups.

To make that process a rule in the rule book, the corporation must make a native title decision in accordance with the PBC Regulations.

The decision-making process that exists under the affected common law holders’ laws and customs is the decision-making process set out for <delete one of the following> the relevant type of decision / relevant sub-group set out in schedule 9.

## Standing instructions decision

A standing instructions decision is a native title decision so to make standing instructions, the corporation must follow the corporation’s process for making a native title decision.

The corporation will make a standing instructions decision if the affected common law holders have approved the corporation making decisions of that kind without the need to consult them and obtain their consent.

The corporation will make a standing instructions decision in accordance with any conditions that the affected common law holders impose on decisions of that kind.

The corporation will comply with the affected common law holders wishes if the common law holders decide to:

* change or withdraw their approval of a standing instructions decision or a class of standing instructions decisions, or
* impose, change or withdraw any conditions that apply to the making of a standing instructions decision or a class of standing instructions decisions.

## Making a native title compensation application

The corporation must consult and obtain the consent of specified persons before it makes a compensation application.

When consulting specified persons about a compensation application, the corporation must ensure that <choose one of the processes below>

If the specified persons have a decision-making process for giving their consent that reflects their traditional laws and customs, you can set out that process here.

the specified persons make their decision by <insert traditional process here>.

OR

If there are different processes for different groups of specified persons, different sub‑groups or different ways of deciding whether to give consent, it might be less complicated to refer to the traditional process without saying exactly what it is. For example:

the specified persons make their decision following the process under their traditional laws and customs.

OR

If the specified persons are not required to use a particular decision-making process under their traditional laws and customs to give their consent, you can set out the process they agree that specified persons should use here.

the specified persons make their decision by <insert agreed process here>.

OR

If the corporation needs to be flexible about the way that decisions are made by different subgroups or in different circumstances, you can use the following rule:

the specified persons agree to adopt a decision-making process and follow that process to make their decision.

## Records of consultation and consent

The corporation must make and keep records for all:

* consultations with affected common law holders about a native title decision, including a record of the process that affected common law holders used to give their consent
* conditions imposed by affected common law holders when they gave their consent to a native title decision
* variations, revocations of conditions imposed by affected common law holders after they gave their consent to a native title decision
* any other directions given by affected common law holders in relation to a native title decision
* consultations with specified persons about a compensation application, including a record of the process that specified persons used to give their consent
* any other directions given by specified persons in relation to a compensation application

As soon as practicable after the corporation has made a native title decision or a compensation application, the corporation must prepare a written certificate in relation to consultation and consent.

The corporation will provide a copy of the certificate in relation to consultation and consent to a person who asks for it if the person:

* is an affected common law holder, or
* has a substantial interest in the decision.

## Records about the corporation and finances

The corporation must keep:

* minutes of meetings (in writing or as an audio or video recording)
* a rule book (constitution)
* a register/s of members and former members
* the names and addresses of directors, officers and the contact person/secretary
* financial records that:
	+ correctly record and explain its transactions, financial position and performance
	+ would enable true and fair financial reports to be prepared and audited
* financial records for any trust.

These records must be kept at the corporation’s document access address or (if it is a large corporation) its registered office.

## Finances

The corporation must follow these procedures:

* The corporation must give receipts for all money it receives.
* All money of the corporation must be deposited into a corporation bank account.
* All accounts must be approved for payment at a directors’ meeting or in accordance with valid delegations.
* All cheques, withdrawal forms, electronic funds transfer (EFT) transactions, and other banking documents must be signed by at least 2 people authorised by the directors.
* All payments made out of the corporation’s money must be supported by adequate documents which explain the nature and purpose of the payment.
* The corporation must keep adequate records for all cash withdrawals from the corporation’s bank accounts (i.e. records that show the cash was used for a proper purpose and in accordance with the corporation’s objectives).
* The financial records must be retained by the corporation for 7 years after the transactions covered by the records are completed.

## Trust account

The corporation shall maintain a separate trust account to hold on trust any money received for native title compensation or other reasons on behalf of the common law holders.

## Application of funds

The corporation is a not-for-profit corporation.

The directors can use the money and property of the corporation to carry out its objectives and functions.

The directors cannot directly or indirectly give or loan any money or property of the corporation to members, directors or any other persons unless:

* it is to a subsidiary controlled by the corporation, or
* a trust in which the corporation is a beneficiary and the trustee is a subsidiary of, or controlled by, the corporation.

This rule does not stop the corporation from making reasonable payment to a member, director or other person in their capacity as an employee or under a contract for goods or services provided in carrying out the corporation’s objectives.

All payments or transfers of funds under this rule must be in accordance with procedures set out under rule 16.

## Giving benefits to a related party

If the corporation wants to give a financial or other personal benefit to a related party of the corporation (including a director or people related to directors such as a husband, wife, partner, child or parent), it must comply with part 6.6 of the CATSI Act and, where required follow the procedure to get the approval of the members.

A ‘benefit’ includes, but is not limited to:

* money
* business opportunity(s)
* transfer of interests in land
* providing any other goods or services to the corporation or others for money or other benefit, or
* being given any other goods or services by the corporation or any other party on request of the corporation.

## Dispute resolution

### Resolving internal corporation disputes

If a dispute arises between a member or director and:

* one or more members
* one or more directors, or
* the corporation

about a matter other than native title described in rule 20.2, the parties must first try to resolve it themselves.

If the dispute is not resolved within 10 business days, any party may give a dispute notice to the other parties.

The dispute notice must be in writing and must say what the dispute is about. It must be given to the corporation.

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice. This may include third party assistance or mediation.

If a dispute or any part of a dispute relates to the meaning of any provision of the CATSI Act or the corporation’s rule book, the directors or any party to the dispute may seek an opinion from the registrar about the correct meaning of the relevant provision. The registrar’s opinion will not be binding on the parties to a dispute.

If the directors cannot resolve the dispute, it must be put to the members to resolve it at a general meeting.

The right to request assistance from the registrar does not create a right to request a formal mediation. However, in an appropriate case the registrar may provide assistance to resolve the matter.

### Resolving native title disputes

RNTBCs must have a rule that provides a process for resolving disputes between the corporation and common law holders or people who say that they are common law holders.

It is a good idea to work with the common law holders to write this rule.

Your rule should outline the process the corporation will use to resolve disputes about:

* who is a common law holder, and
* how the corporation is performing its native title functions.

The process can recognise the tradition and circumstance of each common law holder sub-group or another process.

The rule should include whether the corporation’s process will include facilitators, mediators, experts to arbitrate, or an advisory committee such as a council of elders.

The rule below is an example only that can be used as a starting point for discussions.

If a dispute arises between the corporation and a person who is or who claims to be a common law holder, whether or not the person is a member of the corporation, and the dispute is about:

* whether a person is or is not a common law holder
* the corporation’s performance of its functions under the native title legislation
* other matters directly related to the determination

the corporation must ensure that the parties first try to resolve the dispute between themselves.

The parties must try to resolve the dispute between them in good faith.

The parties may seek the opinion of the native title representative body for the area that the native title rights and interests relate to.

If the dispute is not resolved within 10 business days, the corporation must take reasonable steps to ensure any party who claims a dispute has arisen gives notice of the dispute to the other party (or parties).

The dispute notice must:

* be in writing,
* say what the dispute is about, and
* contain all of the information requested in the form at schedule 8.

Within 10 business days of receiving the dispute notice, the other party or parties to the dispute must provide a dispute notice reply to the party who gave the dispute notice.

The dispute notice reply must contain the information requested in the form at schedule 8A.

The corporation must take reasonable steps to ensure that parties agree to the matters in the dispute notice and dispute notice reply.

The parties must [try to agree on a mediator(s)/facilitators] (mediation) or [refer the matter to an expert or panel or experts] (expert‑determination) or [arrange to meet] (meeting).

You can choose one of the following methods to resolve the dispute if the previous steps don’t work. You can also choose a combination of these methods and support organisations. Choose what will work for your corporation.

If the parties cannot resolve the dispute by taking the previous steps, the parties will:

* ask the [native title representative body] or [insert a support service] to:
	+ call a meeting on the subject of the dispute
	+ set the location
	+ set the date, and
	+ decide any other details of the meeting
* present information about the dispute to the meeting, and
* accept and comply with the decision of the participants in the meeting under this rule.

If the parties cannot resolve the dispute by taking the previous steps, the parties will:

* ask the [native title representative body] or [National Native Title Tribunal] to:
	+ appoint an expert / appoint a panel of experts on the subject of the dispute
	+ set the location
	+ set the date, and
	+ decide any other details of the meeting
* present information about the dispute to the expert or the panel of experts, and
* accept and comply with the decision of the expert or panel of experts under this rule.

If the parties cannot resolve the dispute by taking the previous steps, the parties will:

* ask the [native title representative body] or [National Native Title Tribunal] to:
	+ appoint a mediator(s)
	+ set the location
	+ set the date, and
	+ decide other details of the mediation
* accept and comply with the decision of the [native title representative body] or [National Native Title Tribunal] under this rule.

### Dispute resolution costs

Large corporations may consider inserting the rule below instead of the rule after it:

* The corporation will pay any costs associated with resolving the dispute. This does not extend to travel if any mediation/determination/meeting is held within the determination area or within 50 km of the corporation’s registered office/document access address.

Small or medium corporations may consider inserting this rule instead of the rule above.

* The parties will agree on the total cost/budget for the resolution process and who will pay for the costs of the dispute resolution process.

## Confidentiality requirement

In the course of the corporation performing its functions or exercising its powers, members and directors may have access to confidential or sensitive information. Examples include information that:

* is confidential according to the traditional laws or the customs of the common law holders
* a common law holder has requested be kept confidential (and disclosure of that information is neither authorised by other common law holders nor required by law)
* may affect trading or procurement.

A person handling such confidential information must protect and maintain its confidentiality.

## Winding up

### Members’ resolution required

If the corporation is solvent and not subject to any legal proceedings or regulatory action by the registrar, the members may pass a special resolution for the corporation to be wound up voluntarily.

### Surplus assets of the corporation

Where:

* the corporation is wound up and
* after all debts and liabilities have been taken care of, and costs of winding up have been paid, surplus assets of the corporation exist,

the liquidator can decide how the surplus assets of the corporation are to be distributed if the members have not already decided.

If the members want to decide how the surplus assets are to be distributed, they must pass a special resolution at or before the time of the winding up.

The surplus assets must not be given to any member or to any person to be held in trust for any member and can only be given to a charitable organisation/s with similar charitable purposes or to another prescribed body corporate that will carry out the native title objects and functions under the determination.

This rule is compulsory for not-for-profit corporations.

IMPORTANT!

Corporations that are funded by government may be required to use a rule that complies with their funding agreement and is satisfactory to the funding agency.

## Changing this rule book

### Consistency with other frameworks

The corporation must ensure its rule book complies with all of the law that applies to the common law holders and the corporation.

The corporation must ensure that the constitution is consistent with a determination and with the requirements of the CATSI Act, the Native Title Act and the relevant regulations.

### Changes to certain rules

Changing the rule that sets out a process for decision-making is a native title decision. The corporation must ensure that this decision is made according to the process required by the PBC Regulations, which is set out under rule 11, and the corporation must ensure that the new process complies with the requirements of the PBC regulations.

Changing the rule that sets out a process for decision-making is a native title decision. To change the process under rule 11, the corporation must follow the processes under:

* rule 11, and
* rule 23.3.

Changing the rule that sets out a process for decision-making by specified persons in relation to a compensation application is not a native title decision. But it is a good idea to involve the common law holders in writing this rule because the rule may affect them in future.

The corporation must not make changes to rule 13 unless the corporation has consulted and obtained consent from the common law holders.

The corporation must ensure that the common law holders consent to proposed changes to rule 13 according to the decision-making process that the common law holders agree to use and adopt for giving their consent.

Under rule 23.1, it is the corporation’s job to make sure the rule book complies with the law that applies to the common law holders and RNTBCs, such as who is a common law holder in relation to the corporation. This rule ensures that the corporation can only change schedule 5A in accordance with the determination and other relevant law.

The corporation may only change schedule 5A to comply with rule 23.1.

### Members’ resolution required

The rule book may be changed by the members passing a special resolution at a general meeting or AGM.

The proposed changes must be set out in the notice of the meeting.

Within 28 days after the resolution is passed, the corporation must send the registrar copies of the:

* proposed rule book changes
* special resolution
* minutes of the meeting.

The changes do not take effect until the new rule book is approved and registered by the registrar.

Schedule 1—Application for membership form

**(insert corporation name)**

**ICN ###**

To: The directors, (insert corporation name)

I apply to be a member of the corporation

|  |  |
| --- | --- |
| Name: |  |
| Residential address: |  |
| Postal address: |  |
| Email: |  |
| I am over the age of 18: | Yes ☐ No ☐ |

You can change this form to add any sub-groups by inserting a list here with checkboxes (☐).

I declare that I am eligible for membership.

A member who can confirm that I am a common law holder is:

I agree to follow the rules of the corporation and consent to be a member.

|  |  |  |
| --- | --- | --- |
| Signature of applicant |  |  |
| Date |  |  |

**Corporation use only**

|  |  |
| --- | --- |
| Application received | Date: |
| Application tabled at directors’ meeting | Date: |
| Directors consider applicant is eligible for membership | Yes / No |
| Directors approve the application | Yes / No |
| If approved, new members’ details added to register of members | Date: |
| Applicant notified of directors’ decision | Date: |

Schedule 2—Consent to become a director form

**(insert corporation name)**

**ICN ###**

|  |  |  |
| --- | --- | --- |
| I, |  | (full name of person) |
| of |  | (residential address, a postal address is not sufficient) |
| give consent to become a director of the corporation. |
| I confirm my date of birth is |  | (date of birth) |
| and my place of birth was |  | (place of birth) |
| my director ID is |  | (director ID number) |
| I acknowledge I am automatically disqualified from managing corporations if I:* have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) that is punishable by imprisonment for more than 12 months
* have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
* have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
* am an undischarged bankrupt
* have signed a personal insolvency agreement and have not kept to the agreement
* have been disqualified under the *Corporations Act 2001* from managing corporations,

and I will notify the corporation if any of the above events occur after my appointment.  |
| Signature of person |  |  |
| Date |  |  |

NOTE: This form should be completed and given to the corporation before the person is appointed as a director—section 246-10(1) of the CATSI Act.

The period of automatic disqualification is set out in sections 279-5 and 279-10 of the CATSI Act.

Schedule 3—Nomination to serve as a director form

**(insert corporation name)**

**ICN ###**

|  |  |  |
| --- | --- | --- |
| I, |  | (full name of person) |
| of |  | (residential address, a postal address is not sufficient) |
| nominate and give my consent to become a director of the corporation. |

You can change this form to add any sub-groups by inserting a list here with checkboxes (☐).

My skills and experience relevant to the role as director of the corporation are:

My vision for the corporation is:

I am currently a director of the following entities and currently hold the following roles:

Additional information that will be relevant to members/common law holders in their decision making:

|  |  |  |
| --- | --- | --- |
| Signature of person nominating for position of director |  |  |
| Date |  |  |

Schedule 4—Appointment of a proxy form

**(insert corporation name)**

**ICN ###**

|  |  |  |
| --- | --- | --- |
| I, |  | (full name of member) |
| of |  | (address of member) |
| am a member of the corporation. |
| I appoint |  | (full name of proxy) |
| of |  | (address of proxy) |
| as my proxy to vote for me on my behalf at the general meeting of the corporation (annual general meeting or other general meeting, as the case may be) to be held on / / (insert date of meeting) and at any adjournment of that meeting. |
| Instructions to the proxy holder (optional): |  |  |
| Signature of member appointing proxy |  |  |
| Date |  |  |

NOTE: A proxy vote may be given to the people listed at rule 6.13.
(For more about proxies see rule 6.13 and section 201-90 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.)

Please return your completed form to the corporation **at least 48 hours before** the meeting.

Schedule 5—Native title claim group

IMPORTANT!

If the corporation is the prescribed body corporate for a determination of native title, insert here the description of the native title claim group.

If there are multiple applications, for each application insert name of the application and the description of the native title claim group.

Application for determination of native title: [insert name of the application]

Application made to: [Federal Court or state/territory body]

Native title claim group: [for Federal Court insert description of native title claim group; for state/territory body insert the person or persons making the claim, or on whose behalf the claim is made]

Schedule 5A—Common law holders

IMPORTANT!

The description of the common law holders in this schedule must be exactly the same as the description of the common law holders in each relevant native title determination.

If the corporation is the RNTBC for more than one native title determination, the description of the common law holders in each determination must be stated under the name of that determination.

Determination name: [insert the name of the determination exactly as it appears on the National Native Title Register]

Common law holders: [insert a description of the common law holders exactly the same as it appears in the determination]

Schedule 6—Common law holder sub-groups

The corporation may list different groups according to how the common law holders wish to be identified and represented in committees or on the board. Rules that require representatives from different common law holder sub-groups can list those sub‑groups in this schedule.

Some examples of how common law holder sub-groups may be identified are:

* different estate groups
* groups connected to different parts of a determination area
* specific families
* descendants from particular apical ancestors named in a determination
* common law holders identified in each specific determination (where the corporation is registered for more than one determination).

Schedule 7—Determinations

IMPORTANT!

The name of each determination must be the same as the name of that determination on the National Native Title Register.

If the corporation is the RNTBC for only one native title determination, that is the only determination that you need to list here. If the corporation is the registered native title body corporate for 2 or more native title determinations, all of those determinations should be listed in this schedule. The description or descriptions of the common law holders in Schedule 5 come from all the determinations listed in this Schedule.

Schedule 8—Notice of native title dispute

**(insert corporation name)**

**ICN ###**

|  |  |
| --- | --- |
| Date of this notice |  |
| Name of determination or determination area |  |

### Who is giving notice of dispute

|  |  |
| --- | --- |
| Name of person/party giving notice of dispute |  |
| I am / am not (cross out whichever does not apply) a common law holder for the determination or determination area. |
| I am / am not (cross out whichever does not apply) a member of the corporation. |

### What the dispute is about

Tick all that apply

I am a common law holder and the corporation will not:

☐ recognise me as a common law holder

☐ accept my application for membership

The corporation did not perform its native title functions properly because it did not:

☐ consult me about a native title decision that affects my native title rights and interests

☐ get consent to make a native title decision that affects my rights and interests

☐ consult me about a decision to apply for compensation for a native title decision that affects my native title rights and interests

☐ get consent to make a decision related to a compensation application regarding my native title rights and interests

☐ do something else it is required to do under the Native Title Act or the CATSI Act

Provide some details about the problem:

[for example, provide details about a meeting, a native title decision or a compensation decision that relates to the problem, say what the problem is in your own words]

### Proposed next step

My/our preferred process to resolve the dispute is:

|  |  |  |
| --- | --- | --- |
| **Process:** | mediation / expert-determination / meeting | (select your preferred process) |
| **Name of facilitator:** |  | (for example, the native title representative body, the National Native Title Tribunal, a lawyer, an anthropologist, a senior common law holder, a committee of elders, a professional mediator) |
| **Date and time of activity** |  |  |
| **Location** |  |  |
| **Proposed fee for facilitator:** |  |  |
| **Who is to pay?** |  |  |

I/We agree to participate in the process and accept the outcome of that process.

|  |
| --- |
| ………………………………………. …………………………………… |
| [Signature] [Name] |
| ………………………………………. …………………………………… |
| [Signature] [Name] |

Schedule 8A—Reply to notice of dispute

**(insert corporation name)**

**ICN ###**

|  |  |
| --- | --- |
| Date of this reply |  |

### Responding to notice of dispute

|  |  |
| --- | --- |
| Date of the dispute notice |  |
| Name of person/party who gave notice of dispute |  |
| Name of determination or determination area |  |

### Responding party

|  |  |
| --- | --- |
| Name of responding person/party  |  |
| I am / am not (cross out whichever does not apply) a common law holder for the determination or determination area. |
| I am / am not (cross out whichever does not apply) a member of the corporation. |

### Response to proposed process

I/We have reviewed the proposed process from the party who gave dispute and say  below whether we agree or disagree with their proposal:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Proposed process (by the person/party who gave notice)** |  | **If you disagree, please indicate what you propose instead** |
| **Process:** |  | Agree/disagree |  |
| **Name of facilitator:** |  | Agree/disagree |  |
| **Date and time of activity:** |  | Agree/disagree |  |
| **Location:** |  | Agree/disagree |  |
| **Proposed fee for facilitator:** |  | Agree/disagree |  |
| **Who is to pay?** |  | Agree/disagree |  |

I/We agree to participate in the process and accept the outcome of that process.

|  |
| --- |
| ………………………………………. …………………………………… |
| [Signature] [Name] |
| ………………………………………. …………………………………… |
| [Signature] [Name] |
| ………………………………………. …………………………………… |
| [Signature] [Name] |

Schedule 9 – Native title decision-making process[es]

[if the process is already set out under rule 11, you should delete this schedule]

[choose from one of the following or insert your own process]

The common law holders must follow this process to give their consent to a native title decision:

1.

2.

OR

Each sub-group must follow the process set out below to give their consent to a native title decision:

Sub-group: [insert the name of the subgroup]

Process: [insert a description of the decision-making process for the sub-group here]

Sub-group: [insert the name of the subgroup]

Process: [insert a description of the decision-making process for the sub-group here]

OR

The common law holders must follow the process set out against the type of decision below to give their consent to a native title decision:

The decision: [insert the topic of the decision e.g. decisions about certain songlines]

Process: [insert a description of the decision-making process here]

The decision: [insert the type of decision e.g. decisions about mining agreements]

Process: [insert a description of the decision-making process here]

The decision: [insert the type of decision e.g. decisions about a particular sacred site]

Process: [insert a description of the decision-making process here]