

s22(1)

s22(1)

5. Land, Environment and Cultural Heritage

s22(1)

s22(1)

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s22(1)

- Top End Default PBC – rule book compliance concerns

s22(1)

s22(1)

From: s22(1)
Sent: Wednesday, 26 July 2023 12:17 PM
To: Dyer, Tom (Unclassified)
Cc: s22(1)
Subject: Draft Brief and letter for review - NurrDALinji Native Title Aboriginal Corporation [SEC=OFFICIAL]
Attachments: EC23-001383.docx; Attachment A - Draft Response.docx; Attachment B - incoming correspondence.pdf

OFFICIAL

Hi Tom

See attached, Jody has received correspondence from NurrDALinji Native Title Aboriginal Corporation regarding the Top End Default PBC and its compliance with the new CATSI Act PBC membership requirements.

s22(1), s47C

s22(1)

We've also engaged with ORIC on this and the Registrar has separately received and responded to similar correspondence.

Thanks

s22(1)

s22(1) | Advisor
PBC Policy | Land and Native Title Branch
National Indigenous Australians Agency (NIAA)

s22(1)

s22(1)

s22(1)

From: s22(1)
Sent: Friday, 17 March 2023 6:56 AM
To: s22(1)
Cc: s22(1)
Subject: FW: 081222_Northern Territory Top End Default PBC and compliance with the PBC Regulations [SEC=OFFICIAL:Sensitive]
Attachments: 081222_Northern Territory Top End Default PBC and compliance with the PBC Regulations.docx

OFFICIAL: Sensitive

Hi there,

As per my previous email, please find attached some background info on Top End Default PBC (TED) – no action required, this is FYI only at this stage.

Will chat to s22(1) more about this when he comes on board. s47C
 [Redacted] We
 have had some involvement in this, though is primarily an ORIC responsibility.

For background reading only at the moment.

Cheers
s22(1)

From: s22(1)
Sent: Monday, 12 December 2022 8:29 AM
To: s22(1)
Subject: 081222_Northern Territory Top End Default PBC and compliance with the PBC Regulations [SEC=OFFICIAL:Sensitive]

s22(1)

Northern Territory Top End Default PBC and compliance with the PBC Regulations – 2021 changes to the NTA

Issue:

s47C

The membership rules contained within the legislative amendment bill amend both the NTA 1993 and the PBC Regulations 1999 by:

- Removing a PBC directors' discretion to refuse membership;
- Limiting grounds for cancellation of membership by PBCs;
- PBC membership criteria must align with the native title group description in the native title determination;
- PBC rule books must include a resolution process for disputes with non-members.

PBCs registered before 25 March 2021 need to change their rule books within two years to ensure that:

- Rules for cancelling membership align with those set out in the CATSI Act and there are no additional grounds for cancellation
- Membership rules allow all common law holders to be represented either directly or indirectly
- There are rules for resolving disputes between the PBC and people who are or claim to be common law holders.

See attachment one for an overview of the TED PBC.

s47C

Issues analysis

s47C

¹ Amendments to legislation and regulation

The PBC related reforms are contained in the **Native Title Legislation Amendment Bill 2019** and **Registered Native Title Bodies Corporate Legislation Amendment Regulations 2019** (made following passage of the bill). Together they amend the *Native Title Act 1993*, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, the Native Title (Prescribed Bodies Corporate) Regulations 1999 and other related regulations.

For discussion – not government policy

FOI/2324/017

2. S141-25 (2) of the *CATS/ Act 2006*² requires that the Constitution of all RNTBCs must include eligibility requirements for membership that provide for all the common law holders of native title to be represented, directly or *indirectly*.

s47C

Policy issues

s47C

Legal issue

2 CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006 - SECT 141.25: Corporation may have other eligibility requirements for membership (1) The constitution of an Aboriginal and Torres Strait Islander corporation may provide for other eligibility requirements for membership of the corporation. (2) If the corporation is a registered native title body corporate, the constitution must include eligibility requirements for membership that provide for all the common law holders of native title to be represented, directly or indirectly.

s47C

s47C

s47C

s47C

The date for PBC compliance is March 2023. s47C

s47C

CONFIDENTIAL

BRIEF OVERVIEW OF THE TED PBC⁵

ATTACHMENT ONE

- The Top End (Default PBC/CLA⁶) Aboriginal Corporation (TED PBC) was incorporated on 7 March 2013 under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
- It was created by the NLC to assist native title groups located in remote areas, where there may be little or no substantial development agreements which could provide capacity (financial or otherwise), to handle the administrative requirements of running a corporation.
- The TED PBC is the agent prescribed body corporate for positive determinations of native title in the NLC's region. Currently, it is the agent RNTBC for 86 determinations of native title. The NLC also supports a small number of PBCs that are established outside of the TED Structure i.e. Timber Creek PBC.
- Native title holders have a choice to join TED or establish their own PBC. They also may leave the TED and would need a Federal Court order to establish their own PBC.
- The TED PBC rule book limits membership to persons who are members of the NLC Executive Council and are at least 18 years of age. The NLC Executive Council consists of 14 members including the NLC Chair, Deputy Chair and members elected to represent each of the NLC's seven regions.
- Directors are appointed for a term of up to two years by resolution passed at a general meeting and must be at least 18 years old; a member of the corporation; and an Aboriginal person.

⁵ Information in this attachment taken from an internal paper prepared by [REDACTED]

⁶ An additional objective of the TED PBC is, where appropriate, to operate as a default entity to own title in community living areas granted under NT legislation.

s22(1)

From: s22(1)
Sent: Tuesday, 16 May 2023 4:57 PM
To: s22(1)
Cc: s22(1)
Subject: FW: Top End Default [SEC=OFFICIAL]
Attachments: Back pocket - NLC Top End Default.docx

OFFICIAL

Hi s22(1),

As requested, please find attached back pocket on Top End Default PBC (with thanks to s22(1) and s22(1)) – for Rachel’s consideration/clearance please.

Please let us know if you have any questions, or need further information.

Cheers

s22(1)

s22(1)

Director

PBC Policy | Land and Native Title Branch | Economic Empowerment Group

National Indigenous Australians Agency

s22(1) e. s22(1)

w. niaa.gov.au w. indigenous.gov.au

Charles Perkins House, Woden ACT| PO Box 6500 CANBERRA ACT 2600



The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the Elders past, present and emerging.



From: s22(1)
Sent: Tuesday, 16 May 2023 2:37 PM
To: s22(1)
Cc: s22(1)
Subject: RE: Top End Default [SEC=OFFICIAL]

OFFICIAL

s47C

s22(1)

s22(1)

s22(1)

National Indigenous Australians Agency

s22(1)

From: s22(1)

Sent: Tuesday, 16 May 2023 2:02 PM

To: s22(1)

Cc: s22(1)

Subject: RE: Top End Default [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)

Just chatting with s22(1) - should this be a one page on Top End Default s22(1) ? I think we can provide the background on TED, s47C - s22(1)

Cheers,

s22(1)

s22(1)

Director

PBC Policy | Land and Native Title Branch | Economic Empowerment Group

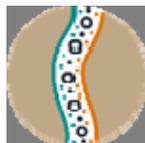
National Indigenous Australians Agency

s22(1)

e. s22(1)

w. niaa.gov.au w. indigenous.gov.au

Charles Perkins House, Woden ACT| PO Box 6500 CANBERRA ACT 2600



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From: s22(1)

Sent: Tuesday, 16 May 2023 11:13 AM

To: s22(1)
Cc: s22(1)
Subject: RE: Top End Default [SEC=OFFICIAL]

OFFICIAL

Thanks s22(1)

s22(1) – see below dot points to start with. Are you OK to pull this together and I can input further if needed?

- The Top End Default PBC/CLA Aboriginal Corporation RNTBC (TED PBC), established by the NLC, is the Prescribed Body Corporate in respect of native title determinations in the broader Beetaloo region and has a service agreement with the NLC for the delivery of operational and administrative support.

- o Membership of TED PBC

s22(1)

s22(1)

s22(1)
National Indigenous Australians Agency
s22(1)

From: s22(1)
Sent: Tuesday, 16 May 2023 10:18 AM
To: s22(1)
s22(1)
Subject: Top End Default [SEC=OFFICIAL]

OFFICIAL

s22(1)

s22(1)

Executive Assistant to Rachel Kerrigan | Branch Manager
Land Branch

National Indigenous Australians Agency
s22(1)

Charles Perkins House 16 Bowes Place Phillip ACT 2606
w. niaa.gov.au w. indigenous.gov.au



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NLC Top End Default PBC

- The NLC's Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (Top End Default PBC) was incorporated on 7 March 2013 under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
- The TED PBC is the agent prescribed body corporate for positive determinations of native title in the NLC's region. Currently, it is the agent RNTBC for 86 determinations of native title and also covers native title determinations in the Beetaloo region.
- Native title holders have a choice to join TED or establish their own PBC.
 - To replace the Top End Default PBC with a new PBC, Native Title holders are required to apply for a determination by the Federal Court.
- The TED PBC rule book limits membership to persons who are members of the NLC Executive Council and are at least 18 years of age. The NLC Executive Council consists of 14 members including the NLC Chair, Deputy Chair and members elected to represent each of the NLC's seven regions.
- Directors are appointed for a term of up to two years by resolution passed at a general meeting and must be at least 18 years old; a member of the corporation; and an Aboriginal person.
- There is a services agreement between the Top End PBC and the NLC under which NLC staff assist the directors to exercise the PBC's functions (any questions about the type of support provided should be directed to the NLC).
- In October 2020, members of a number of native title groups in the broader Beetaloo region registered the Nurrdalindji Native Title Aboriginal Corporation (NNTAC). NNTAC is comprised of over 60 native title holders in the Beetaloo region (see Beetaloo Bay Sub Basin development for more detail).
- The NNTAC claims the NLC and the Top End Default PBC do not represent the views of its members. An application to the Federal Court by NNTAC for PBC status was discontinued on 5 March 2021.

PBC Rulebook Changes

- Under the *Native Title Legislation Amendment Act 2021*, PBCs registered before 25 March 2021 were required to update their rulebooks by 24 March 2023 to:
 - allow for all common law holders to be represented in the membership of the corporation, either directly or indirectly
 - remove any rules that indicate directors can reject a membership application if the applicant is eligible for membership (namely a common law holder) and applies in the proper way state how to resolve a dispute between the RNTBC and a common law holder (or person who claims to be a common law holder).

- We understand discussions between the NLC and Office of the Registrar of Indigenous Corporations (ORIC) regarding these rulebook change requirements are ongoing.
- Questions relating the status of the Top End Default PBC rulebook changes should be directed to the NLC and ORIC.

s22(1)

From: s22(1)
Sent: Monday, 9 January 2023 9:29 AM
To: s22(1)
Subject: FW: Welcome back [SEC=PROTECTED]

From: s22(1)
Sent: Friday, 6 January 2023 5:16 PM
To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Cc: s22(1)

Subject: Welcome back [SEC=PROTECTED]

PROTECTED

Hi Rachel

s22(1)

- Top End Default s47C with indirect representation model being proposed by TED in draft rule book changes. ORIC to review and advise if will meet requirements

s22(1)

From: s22(1)
Sent: Thursday, 19 January 2023 6:14 PM
To: s22(1)
Subject: s22(1)

Top End Default

- s47C
 - Legislation doesn't define an indirect model
- s47C

s22(1)

--
 s22(1) (he/his)
 A/g Senior Adviser
 Native Title Policy and Agreements | Land and Native Title Branch | Economic Policy & Program Group
 National Indigenous Australians Agency
 s22(1)
 Charles Perkins House 16 Bowes Place Phillip ACT 2606
 w. niaa.gov.au w. indigenous.gov.au
 Biripi man living on Turrbal and Jagera country.



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s22(1)

From: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Sent: Monday, 31 October 2022 7:45 PM
To: Huey, Andrew; s22(1)
Cc: s22(1)
Subject: PBC rule book requirements - Top End Default [SEC=OFFICIAL]

OFFICIAL

Hi Andrew and s22(1)

I know we briefly touched on Top End Default at our last catch up. I recall that ORIC was planning to talk to NLC back at the end of last year/start of this year, but I'm not sure how far this progressed (and with staff changes at NLC etc, the current staff aren't aware of these discussions). I wanted to check if you had any further information about any discussions with NLC or consideration about the Top End Default arrangement to date? I am keen to discuss implications and consider how to progress ahead of further discussion with the NLC – would you have some time later this week we could discuss?

Thanks
Rachel

Rachel Kerrigan | Branch Manager
 Land Branch | National Indigenous Australians Agency
 s22(1)
 Charles Perkins House 16 Bowes Place Phillip ACT 2606
 w. www.niaa.gov.au w. indigenous.gov.au



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s22(1)

From: s22(1)
Sent: Thursday, 15 December 2022 4:20 PM
To: s22(1)
Subject: RE: 081222_Northern Territory Top End Default PBC and compliance with the PBC Regulations [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s22(1)
s47C
s22(1)

s22(1)

From: s22(1)
Sent: Thursday, 15 December 2022 4:15 PM
To: s22(1)
Subject: RE: 081222_Northern Territory Top End Default PBC and compliance with the PBC Regulations [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s22(1)

By way of update – I just got off the phone with ORIC on another matter, and snuck in an update on TED /NLC.

s47C

s47C

. I have asked ORIC to keep us posted and they will meet with us to discuss in the new year. s47C

s22(1)

s22(1)

s22(1)

From: s47F
Sent: Thursday, 3 November 2022 8:34 AM
To: Kerrigan, Rachel
Cc: s22(1)
Subject: RE: Contact in ORIC [SEC=OFFICIAL]

Thanks Rachel – much appreciated.

I've copied to s22(1) and s22(1) from Land and Law Group who are working on this matter in NLC.

s22(1) and s22(1) will be in touch with s22(1) and s22(1)

Regards,

s47F

From: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Sent: Wednesday, 2 November 2022 6:31 PM
To: s47F
Cc: s22(1)
Subject: RE: Contact in ORIC [SEC=OFFICIAL]

OFFICIAL

Hi s47F

s22(1) and Andrew Huey would be the best contacts – emails copied into the email.

Following our discussions last week, I am also planning to discuss options with ORIC.

Thanks
 Rachel

Rachel Kerrigan | Branch Manager
 Land Branch | National Indigenous Australians Agency
 s22(1)

From: s47F
Sent: Tuesday, 1 November 2022 6:23 PM
To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Subject: Contact in ORIC

Hi Rachel – the team in NLC dealing with Top End Default would like to talk to someone in ORIC about some options for dealing with the upcoming changes to the rules for PBCs.

I suggested Deputy Registrar but offered to follow up with you to see who would be best for them to meet with in ORIC.

Grateful for your advice and contact details if possible?

Happy to chat if you prefer.

s47F

s47F

Senior Manager – Government Relations & Engagement
Northern Land Council



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

45 Mitchell St, Darwin NT 0801

GPO Box 1222, Darwin NT 0801

Mob: +s47F | Ph: +s47F

Email: S4 / F | Website: www.nlc.org.au

s22(1)

s22(1)

From: s22(1)
Sent: Tuesday, 25 July 2023 5:00 PM
To: s22(1)
Subject: RE: Discussion with NLC TEDPBC [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)

s22(1)

Thanks
s22(1)

From: s22(1)
Sent: Friday, 21 July 2023 5:19 PM
To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Cc: s22(1)
Subject: Discussion with NLC TEDPBC [SEC=OFFICIAL]

OFFICIAL

Hi Rachel

I had a discussion with s22(1) today regarding the NLC's position on TEDPBC compliance with the Native Title Act.

s47C

s22(1) - s22(1)

s22(1)

s22(1) | Senior Adviser
NT Land Operations | Land and Native Title Branch | Economic Empowerment Group
National Indigenous Australians Agency

s22(1)
Jacana House 39-41 Woods St Darwin NT 0800 | GPO Box 9932 DARWIN NT 0801



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s22(1)

From: s22(1)
Sent: Wednesday, 19 April 2023 11:53 AM
To: s22(1)
Cc: s22(1)
Subject: NLC TED PBC [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)

We're hoping you might be able to provide an update on where things are up to with rulebook changes for the TED PBC.

s47C

Any update you can provide would be great.

Also happy to chat if easier.

Thanks

s22(1)

s22(1) | Advisor
PBC Policy | Land and Native Title Branch
National Indigenous Australians Agency (NIAA)
s22(1)

Note: I work part-time and am not in the office on Thursdays.

Top End Default PBC

- s47C



- s47C



s22(1)

Land Rights Funding and ABA Operations | Land & Native Title Branch | Economic Empowerment Group
National Indigenous Australians Agency

s22(1)

Charles Perkins House 16 Bowes Place Phillip ACT 2606 | PO Box 2191 CANBERRA ACT 2601

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s22(1)

s22(1)

From: s22(1)
Sent: Wednesday, 2 August 2023 8:58 PM
To: s22(1)
Cc: s22(1)
Subject: Re: PDMS Weekly Branch Report [SEC=OFFICIAL]

s22(1)

OFFICIAL

Hi s22(1)

s22(1)

s47C

s22(1)

s22(1)

s22(1)

NATIONAL INDIGENOUS AUSTRALIANS AGENCY

NIAA
CEO
Ms Guivarra
Mr Binning
Ms Kerrigan
Mr Dyer

To: Chief Executive Officer

NORTHERN LAND COUNCIL TOP END DEFAULT PRESCRIBED BODY CORPORATE

NIAA
Executive
Coordination

Recommendation - that you:

- 1. Sign the draft response at Attachment A to s47F, Chairperson of Nurrdalynji Native Title Aboriginal Corporation (NNTAC).

JODY BROWN
Comments:

s22(1)

Date:

Signed / Not Signed
7/8/23

Key Points:

- 1. NNTAC Chairperson s47F wrote to you on 20 July 2023 (Attachment B) regarding operations of the Top End (Default) Aboriginal Corporation RNTBC (TED PBC).

s47C

TED PBC CATSI Act Compliance

- 2. The management of Native Title in Northern Land Council (NLC) region is unique, in that all Native Title determinations are covered by one PBC, the TED PBC. The TED PBC, with the support of the NLC, performs Native Title functions on behalf of Native Title holders for all 86 native title determinations in the region. This includes consulting and engaging with Traditional Owners and obtaining consent for Native Title decisions.
- 3. The TED PBC rule book limits membership to persons who are members of the NLC Executive Council. The Executive Council consists of 14 members including the NLC Chair, Deputy Chair and members elected to represent each of the NLC's seven regions.
- 4. There has been ongoing engagement between the Office of Registrar of Indigenous Corporations (ORIC), NLC and NIAA regarding TED PBC rulebook compliance. s47C

[Redacted]

- 5. However, ORIC has advised the proposed rulebook amendments and proposed model of indirect representation may not meet requirements.

6. The Registrar has written to TED PBC Directors (Attachment C) seeking its plan to ensure Native Title holders are represented in the membership of the TED PBC. The Registrar has also written to [redacted] outlining engagement with the TED PBC (Attachment D).

7. s47C [redacted]

Next Steps

8. s47C [redacted]

9. s47C [redacted]

10. s47C [redacted]

11. s47C [redacted]

Background

12. s22(1) [redacted]

13. s22(1) [redacted]

14. s22(1) [redacted]

15. s47C [redacted]

16. s22(1) [redacted]

Rachel Kerrigan
Branch Manager
Land and Native Title
3 August 2023

Policy Officer: s22(1)

Phone no: s22(1)

Consultation: s22(1)

ATTACHMENTS

ATTACHMENT A s22(1) 

ATTACHMENT B INCOMING CORRESPONDENCE

ATTACHMENT C REGISTRAR LETTER TO TED PBC

ATTACHMENT D REGISTRAR LETTER TO NNTAC



Australian Government
National Indigenous Australians Agency

CHIEF EXECUTIVE OFFICER
JODY BROUN

Reference: EC23-001383

Mr **s47F**
Chairperson
Nurrdalindi Native Title Aboriginal Corporation
contact@nurrdalindi.org.au

Dear **s47F**

Thank you for your letter of 20 July 2023 regarding the membership of the Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (Top End Default PBC).

I appreciate you taking the time to raise your concerns and for outlining your aspirations for Nurrdalindi Native Title Aboriginal Corporation, its members, and Native Title holders across the Beetaloo Sub-basin.

As you know, the Top End Default PBC is responsible for consulting and engaging with Traditional Owners, and obtaining their consent in regards to any decisions that affect Native Title rights and interests. As you have identified, changes to the *Corporations (Aboriginal and Torres Strait Islander Act) 2006* made by the *Native Title Legislation Amendment Act 2021* have now come into effect. These changes require PBCs to update their rulebooks to comply with new membership and other requirements.

I understand the Registrar of Indigenous Corporations, Ms Tricia Stroud, recently wrote to you indicating ORIC is working with PBCs who have not yet made these rulebook changes, and has asked Top End Default PBC Directors about their plans to achieve consistency with the new requirements. It will be important to ensure that any new arrangements align with the needs and views of the Native Title holders the Top End Default PBC represents.

I invite you to reach out to the National Indigenous Australians Agency (NIAA) if you have any further questions regarding this matter. The contact officer in the NIAA is Ms Rachel Kerrigan, who can be contacted on **s22(1)** or at Rachel.Kerrigan@niaa.gov.au.

Yours sincerely

s22(1)

7 August 2023

25 July 2023

The Directors
Top End (Default PBC/CLA) Aboriginal Corporation RNTBC
c/o s47F
Contact Person
s47F

Dear Directors

Membership model of Top End (Default PBC/CLA) Aboriginal Corporation RNTBC

I am writing to you in your capacity as a director of Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (the corporation).

The Office of the Registrar of Indigenous Corporation (ORIC) is initiating follow-up correspondence with directors of registered native title body corporates (RNTBCs) where ORIC has identified the RNTBC has not yet made the rule book changes required in order to be consistent with amendments made to the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) by the Native Title Legislation Amendment Act 2021 (NTLA).

I want to particularly recognise the unique circumstances of this corporation, which is the RNTBC for 86 native title determinations in the Northern Land Council (NLC) region of the Northern Territory.

I have met with the NLC on 24 January 2023 and 23 March 2023 to discuss these issues and want to thank the NLC for proactively raising the matter.

The corporation does not currently have a governance structure that reflects the objects of the recent amendments made to the CATSI Act by the NTLA. These amendments are directed at requiring the alignment of membership criteria with native title determinations.

In our meetings, the NLC's representatives have also raised various challenges for rethinking the corporation's membership model. I agree that a new representative membership model is not a matter that can be decided by the current membership of the corporation but is a matter for the common law holders for whom the corporation holds native title rights and interests.

I would like to propose a meeting with the board to discuss the development of a plan to work towards a membership structure that aligns membership with the determined common law holders of native title for whom the corporation manages native title rights and interests.

Can I propose a meeting with the current directors at the earliest to discuss.

Yours sincerely

s22(1)

Tricia Stroud
Registrar

25 July 2023

s47F

Chairperson
Nurrdalinji Native Title Aboriginal Corporation
contact@nurrdalinji.org.au

Dear s47F

Top End (Default PBC/CLA) Aboriginal Corporation RNTBC

Thank you for your letter of 20 July 2023 regarding Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (**TED**).

I wanted to provide you an expedited response, noting that you raise issues that will be relevant to all common law holders of native title under the 86 determinations of native title in the NLC region of the Northern Territory, for which TED manages native title rights and benefits.

There are currently approximately 90 of the 259 RNTBCs who have not yet made the rule book changes required in order to be consistent with amendments made to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)* by the *Native Title Legislation Amendment Act 2021 (NTLA)*.

ORIC is, over the coming months, contacting all RNTBCs who are not yet fully compliant to understand their plans to become consistent with these requirements. Each RNTBC's circumstances will be different and the circumstances of Top End (Default PBC/CLA) Aboriginal Corporation RNTBC are particularly unique.

I have written to the directors of TED seeking submissions on their plans to achieve consistency with the requirements. In doing so I recognise that as the RNTBC for 86 native title determinations, the rule book changes will require careful consideration of the circumstances of the 86 determinations.

I do not propose to take any regulatory action available to me under the CATSI Act until I can consider these plans.

Please feel free to contact s22(1) [REDACTED], Senior Native Title Engagement Officer on s22(1) [REDACTED] if you wish to discuss these matters further with representatives in ORIC.

Yours sincerely

s22(1)

Tricia Stroud
Registrar



NurrDALINJI Native Title Aboriginal Corporation

ABN: 32 608 508 769

ICN: 9392

20 July 2023

Ms Jody Broun
Chief Executive Officer
National Indigenous Australians Agency
Charles Perkins House
16 Bowes Place
Woden ACT 2606

By email: jody.broun@niaa.gov.au

Dear Ms Broun,

Non-compliance of Top End (Default PBC/CLA) Aboriginal Corporation with CATSI Act

I am the Chairperson of NurrDALINJI Native Title Aboriginal Corporation (“NurrDALINJI”) and I write to you about the Top End (Default PBC/CLA) Aboriginal Corporation (“TED PBC”) and its parent body the Northern Land Council (“NLC”), which I understand is funded by the National Indigenous Australians Agency (“NIAA”).

About NurrDALINJI Native Title Aboriginal Corporation

By way of introduction, NurrDALINJI was registered with the Office of the Registrar of Indigenous Corporations on 9 October 2020, following an historic meeting of native title holders from throughout the Beetaloo Sub-basin area held at Daly Waters.

The name “NurrDALINJI” means “mixed tribe” in Alawa language, reflecting both our members’ diversity and unity.

Our members are over 60 native title holders from 11 native title determination areas across the Beetaloo Sub-basin area of the Northern Territory. Membership is open to all adult native title holders for these determinations.

NurrDALINJI’s objects include becoming the registered native title body corporate for all or some of the determinations in our area, but to date that has not occurred. In the meantime, we aim to support Beetaloo Sub-basin native title holders who want to be consulted about what happens on our country. We want all native title holders to be heard and to be able to participate in determining our future.

Top End (Default PBC/CLA) Aboriginal Corporation

As you may know, the TED PBC is the registered native title body corporate (“RNTBC”) for all 86 determinations of native title in the NLC’s administrative area. Its permitted members are not

common law native title holders, but are instead the members of the NLC's Executive Council. These nine NLC members are also TED PBC's directors. The TED PBC has no bank account, holds no assets and has no staff. It is entirely controlled and administered by the NLC. It is truly a body that exists in name only. In effect, the NLC has made itself both representative body and RNTBC: principal and agent; client and legal representative.

This is a highly unusual arrangement. There is no comparable entity to the TED PBC in any other region in Australia outside the NLC's representative body area. In other regions, representative bodies actively support and facilitate native title holders to establish their own PBCs following a determination of native title. Native title holders in the NLC's representative body area, however, are entirely shut out from their RNTBC, and its governance and business remains entirely obscure to them.

We understand that NIAA provides funding for the ongoing operations of the TED PBC. We see from the last Northern Land Council's (NLC) 2021-2023 Annual Report (p 153) that the NLC received \$500,000 in that financial year for "Prescribed Bodies Corporate support funding". As I have said, TED PBC has no bank account and unlike other RNTBCs, does not publicly record any funding income.

We therefore wish to bring to NIAA's attention the fact that the TED PBC arrangement is contrary to the plain intent of native title law. TED PBC is, amongst other things, non-compliant with the important new provision in s 141-25(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) ("CATSI Act").

As you may know, s 141-25(2) of the CATSI Act was one of a number of new RNTBC laws introduced by the *Native Title Legislation Amendment Act 2021*. The Explanatory Memorandum for the Bill noted the central place played by RNTBC's in the administration of native title. According to the Explanatory Memorandum the purpose of the RNTBC amendments was clear. It stated:

"These amendments collectively seek to ensure that common law holders enjoy and have control over their native title rights and interests, in particular, following a determination of native title."

It noted that:

"RNTBCs are the primary bodies that perform functions in relation to native title rights and interests. Accordingly, membership of an RNTBC allows common law holders to exercise important rights in relation to their native title rights and interests."

It referenced the views of the United Nations Human Rights Council and concluded:

"The Bill will advance the rights of the common law holders by creating new requirements for RNTBCs relating to eligibility for membership and limiting the grounds for cancelling membership of an RNTBC. These measures will assist to prevent RNTBCs from arbitrarily acting to exclude common law holders from membership and to ensure that all common law holders may be represented in an RNTBC, directly or indirectly. This will allow common law holders to be involved in decision-making that may affect their native title rights and interests."

The way in which s 141-25(2) of the CATSI Act contributes to this is to impose certain requirements on the constitutions of RNTBCs. It says that an RNTBC's constitution:

“must include eligibility requirements for membership that provide for all the common law holders of native title to be represented, directly or indirectly.”

The situation established by the TED PBC is precisely what the RNTBC amendments was intended to guard against. Its constitution says that membership is only open to the members of the NLC’s Executive Council and that only these members are eligible to be directors. As a result, in the Beetaloo Sub-basin area and across the Top End of the Northern Territory, common law native title holders cannot, amongst other things:

- become a member of their RNTBC,
- become a director,
- obtain access to the RNTBC’s books and records,
- requisition a general meeting, or even
- attend or ask questions at an AGM.

This is a disgraceful situation, which the NLC and TED PBC appear to be perpetuating with impunity. This is of particular concern to native title holders in the Beetaloo Sub-basin area at present, given the pressures we are feeling as our country is the subject of intense attention from the gas industry and the Northern Territory and Commonwealth governments.

For years now we have been raising matters like this with the NLC and the TED PBC, yet there has been no move to address them. As I noted at the beginning of this letter, we have had no response to our 5 May 2023 letter to TED PBC and the website of the Office of the Registrar of Indigenous Corporations shows that its constitution remains unchanged.

This is not the only way the TED PBC arrangement is operating outside of the law. Through the TED PBC arrangement, the NLC has effectively ignored important aspects of the scheme in the *Native Title Act 1993* (“NTA”) under which, amongst other things:

- separation between the native title representative body on the one hand and registered native title bodies corporate on the other is essential (e.g. s 201B(1) of the NTA, which has effect that an RNTBC is not eligible to be recognised as a representative body), and
- representative bodies are permitted to perform their facilitation and assistance functions only if requested to do so by the RNTBC (or other relevant stakeholder) (s 203BB(2) of the NTA).

The NLC has collapsed the distinction between representative body and RNTBC into one, effectively denying common law holders essential agency in relation to our own affairs.

We also have strong reasons to doubt that the TED PBC was lawfully determined to be the PBC for the 11 determinations of native title Nurrdalindi draws its members from. This is because consent of the kind required by s 59A of the NTA (and see also reg. 4A of the *Native Title (Prescribed Bodies Corporate) Regulations 1999*).

Conclusion

I have brought these matters to your attention because we are concerned that NIAA may be considering further funding the TED PBC. I am sure you agree that NIAA should not continue to fund the TED PBC if it does not comply with important Commonwealth law.

Could you please give consideration to the important matters raised in this letter and advise how you view the TED PBC’s non-compliance and what you plan to do in response?

In the meantime, we are also taking some other steps aimed at achieving a lawful and responsive RNTBC. As you may know, the Australian National Audit Office (ANAO) is currently conducting a performance audit of the governance of the NLC. We have made both a primary and supplementary submission to this audit, noting other extremely troubling aspects of the TED PBC, its relationship with the NLC and its ability to properly represent native title holders and their interests.

I will also be writing to the Registrar of Indigenous Corporations about action the Registrar might consider taking under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

If anything I have said above is unclear, or you would like to explore these matters further with us, please let me know.

I look forward to your early response.

Yours faithfully,



Chairperson

s22(1)

NATIONAL INDIGENOUS AUSTRALIANS AGENCY

To: Chief Executive Officer

CEO MEETING – NORTHERN LAND COUNCIL

NIAA
Ms Guivarra
Mr Brahim
Mr Binning
Ms Kerrigan
Ms Mackay
Mr Wanganeen
Mr Dyer

Attendees:

Mr Joe Martin-Jard, CEO Northern Land Council (NLC)

s22(1)

NIAA
Executive
Coordination

Purpose:

s22(1)

s22(1)

NLC Top End Default Prescribed Body Corporate

- The NIAA is working with the NLC regarding compliance with the requirements of the *Native Title Act 1993* (NTA) to allow Native Title holders to be represented in the membership of the Top End Default PBC/CLA.

s47C

s22(1)

Tessa Keane
Acting Branch Manager
Land and Native Title Branch
24 July 2023

Contact Officer: s22(1) [redacted]
s22(1) [redacted]
Consultation: s22(1) [redacted]
[redacted]
[redacted]

NOTED:

Date:

NLC engagement with NIAA

NLC Top End Default Prescribed Body Corporate

- The management of Native Title rights and interests in northern NT is unique in that all Native Title determinations are covered by one Prescribed Bodies Corporate (PBC), the Top End Default PBC/CLA Aboriginal Corporation Registered Native Title Body Corporate (Top End Default PBC/CLA).
- At the time of determination, Native Title holders have a choice to join the Top End Default PBC/CLA or establish their own PBC (however this has not yet occurred). Once Native Title holders opt in to the Top End Default PBC/CLA model, to separate and establish a separate PBC, a determination from the Federal Court is needed to recognise the alternate PBC.
- In October 2020, members of a number of Native Title groups in the Beetaloo basin made an application to the Federal Court to register their own PBC, claiming the NLC was not representing the views of its members. This action was discontinued in March 2021.
- s22(1)
[Redacted]
- Under 2021 amendments to the *Native Title Act 1993* (NTA), all PBCs were required to update their rulebooks by 24 March 2023 to allow for Native Title holders to be represented in the membership of the PBC.
- s47C
[Redacted]
- The Top End Default PBC/CLA rule book currently limits membership to persons who are members of the NLC Executive Council (14 members elected from each of the NLC's 7 regions). s47C
[Redacted]
- s47C
[Redacted]
- s47C
[Redacted]
- s47C
[Redacted]
- s47C
[Redacted]

s22(1)

From: s47F
Sent: Thursday, 8 December 2022 1:00 PM
To: s22(1)
Cc: Kerrigan, Rachel; s22(1)
Subject: RE: Regional support [SEC=OFFICIAL]

OFFICIAL

s22(1)

s47F

From: s22(1)
Sent: Thursday, 1 December 2022 5:15 PM
To: s47F
Cc: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>; s22(1)
Subject: RE: Regional support [SEC=OFFICIAL]

OFFICIAL

Hi s47F ,

s22(1)

s22(1)

s22(1)

s22(1)

s47C

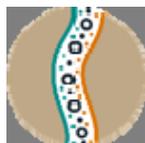
s22(1)

s22(1)

Please let me know if you need further information, or would like more specific information about any of these examples.

Cheers,
s22(1)

s22(1)
Director
PBC Policy | Land Branch | Economic Policy and Programs Group
National Indigenous Australians Agency
s22(1) e. s22(1)
w. niaa.gov.au w. indigenous.gov.au



The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the Elders past, present and emerging.



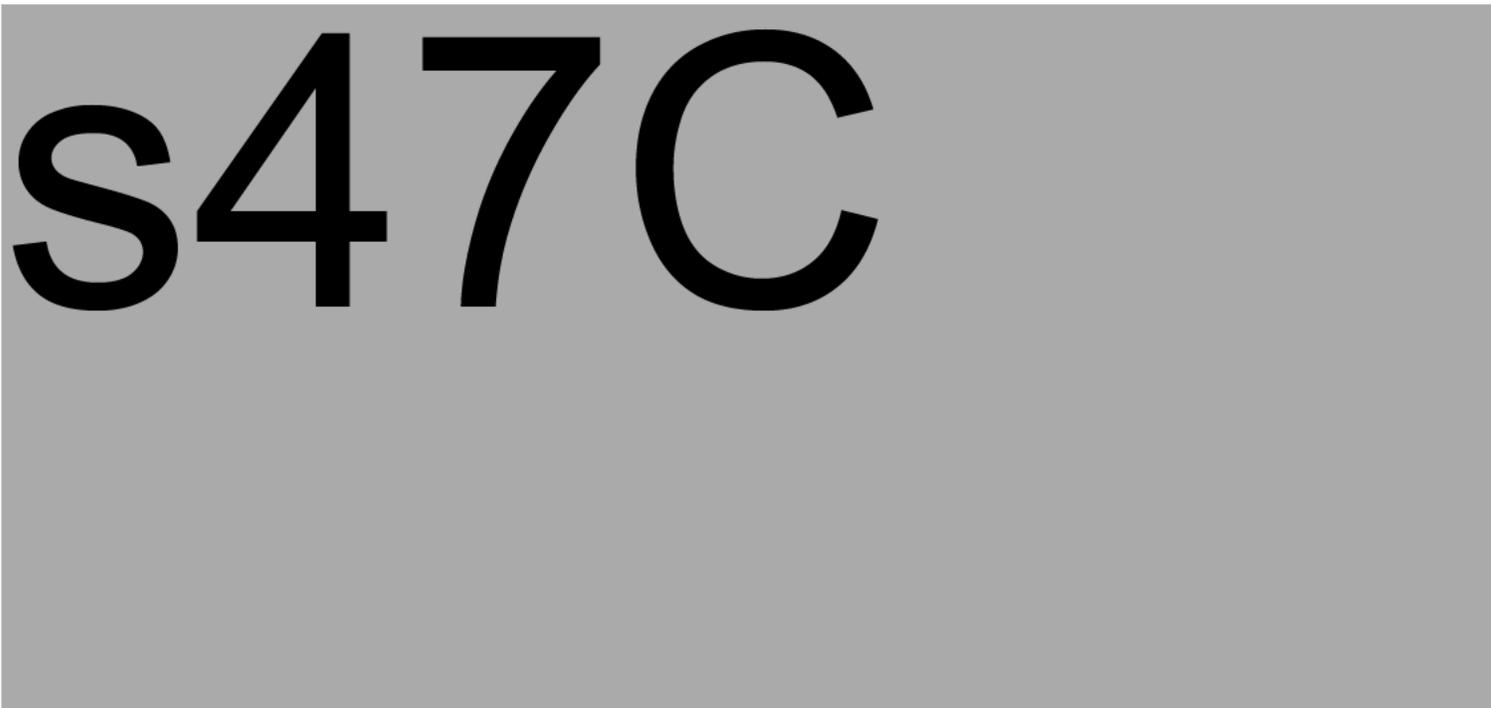
From: s22(1)
Sent: Thursday, 1 December 2022 2:05 PM
To: s47F

s22(1)

From: s22(1)
Sent: Tuesday, 6 December 2022 1:25 PM
To: s22(1)
Cc: s22(1)
Subject: Top end default - options analysis [SEC=OFFICIAL]
Attachments: Overview of RSAS funding model options.docx; Organisation Structure options - risk benefits.docx; Options Analysis Palm Island Shuttle.docx

OFFICIAL

H s22(1),

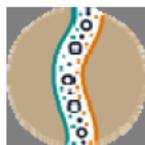


Cheers,
s22(1)

s22(1)

Director
 PBC Policy | Land Branch | Economic Policy and Programs Group
 National Indigenous Australians Agency
 s22(1) e. s22(1)

w. niaa.gov.au w. indigenous.gov.au
 Charles Perkins House, Woden ACT | PO Box 6500 CANBERRA ACT 2600



The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the Elders past, present and emerging.

s22(1)

- TED PBC model s47C consulting NTHs first. s47C

Can't change membership rules without

s22(1)

s22(1)

From: Kerrigan, Rachel
Sent: Thursday, 20 July 2023 10:08 AM
To: s22(1)
Subject: FW: Top End Default PBC, non-compliance with CATSI Act [SEC=OFFICIAL]
Attachments: 230720_NIAA re CATSI TED PBC.docx.pdf

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL

s22(1)

s47C

Rachel Kerrigan | Branch Manager
Land and Native Title Branch | National Indigenous Australians Agency

s22(1)

From: Kerrigan, Rachel
Sent: Thursday, 20 July 2023 10:04 AM
To: Broun, Jody <Jody.Broun@niaa.gov.au>
Cc: s22(1); Guivarra, Julie-Ann <Julie-Ann.Guivarra@niaa.gov.au>; Binning, Carl <Carl.Binning@niaa.gov.au>; s22(1)
Subject: RE: Top End Default PBC, non-compliance with CATSI Act [SEC=OFFICIAL]

OFFICIAL

Hi Jody

Thanks, will do. We will seek an update on the latest correspondence from ORIC, as the Registrar was preparing to write to the NLC for advice on the proposed pathway to update the Top End Default Rulebook.

s47C – the Top End Default is the PBC covering 80+ determinations across the NLC region. The membership of the TED is the Executive of the NLC (as written in its rulebook). The changes to the Native Title Act/PBC regulations around membership that commenced at the end of March require the PBC to allow all native title holders to be represented.

s22(1)

s22(1)

Happy to discuss.

Rachel

Rachel Kerrigan | Branch Manager

Land and Native Title Branch | National Indigenous Australians Agency

s22(1)

From: Broun, Jody <Jody.Broun@niaa.gov.au>

Sent: Thursday, 20 July 2023 9:44 AM

To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>

Cc: s22(1)

Subject: Fwd: Top End Default PBC, non-compliance with CATSI Act

s22(1)

s22(1)

NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MEETING BRIEF

NIAA
Ms Broun
Ms Guivarra
Mr Brahim
Mr Binning
Ms Kerrigan
Ms
Bellenger
Ms McKay

To: Assistant Minister for Indigenous Australians

s22(1)

s22(1)

NIAA
Executive
Coordination

Attendees:

- s22(1)
- s22(1)

MO
Mr Watts
s47F

Purpose:

(Talking Points are at Attachment A)

s22(1)

s22(1)

- The Office of the Register of Indigenous Corporations has recently written to the Top End (Default PBC/CLA) seeking submissions on their plans to achieve consistency with amendments to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, which require rule book changes to align membership criteria with native title determinations

s22(1)

s22(1)

Rachel Kerrigan
Branch Manager
Land and Native Title Branch
31 July 2023

Contact Officer: s22(1)
m. s22(1)
s22(1)

NOTED:

Date:

27/06/23

Monday, 26 June 2023 3:21 PM

s22(1)

s22(1)

- ORIC will talk with me this regarding corro to NLC on the TED compliance, on language for letters - but seeking to get them to outline the pathway to becoming compliance
 - o Will write to all PBC not current compliant with rulebook as well.

s22(1)

6/12/22

Monday, 5 December 2022 12:21 PM

s22(1)

s47C

s22(1)

- s47C
o s47C

s22(1)