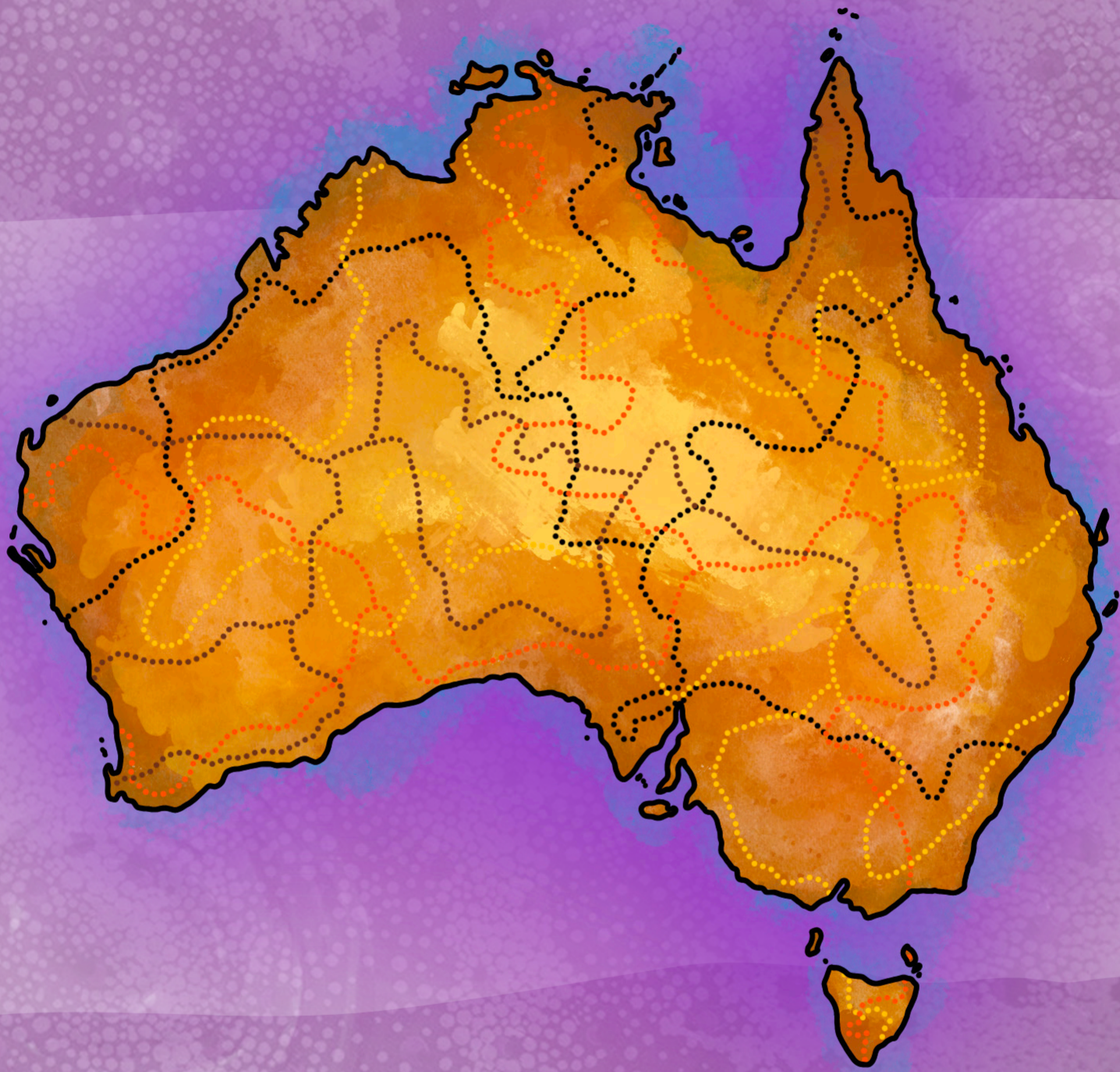


# How to Claim Native Title



AUGUST 2024

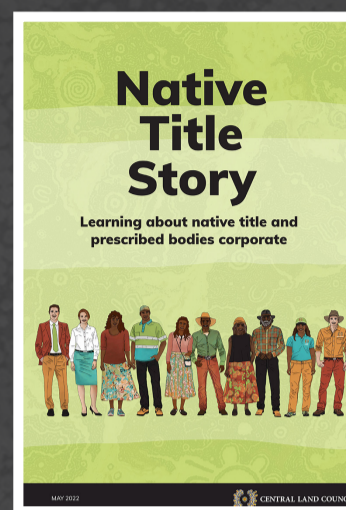


CENTRAL LAND COUNCIL

# These booklets help native title holders understand native title and prescribed body corporate (PBC) business.

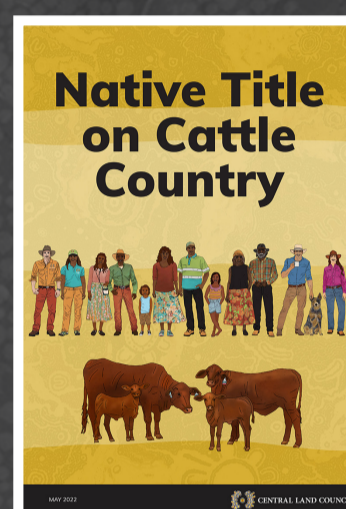
Native Title Story: Learning about native title and prescribed bodies corporate

May 2022



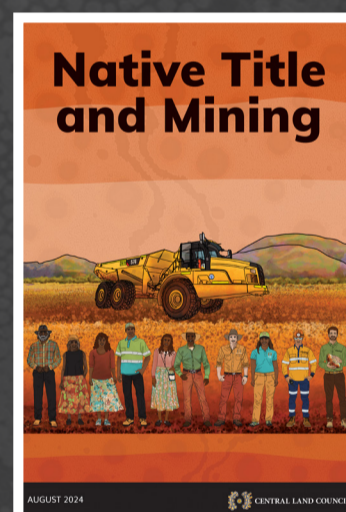
Native Title on Cattle Country

May 2022



Native Title and Mining

August 2024



How to Claim Native Title

August 2024



The Central Land Council (CLC) and Aboriginal people in central Australia made these booklets.

# Some hard words about native title

**native title** Native title recognises the traditional law of Aboriginal and Torres Strait Islander people who have always been on this land.

**native title claim** The way to get native title recognised by whitefella law.

**native title claim area** The area of land where people will try to get native title recognised by whitefella law.

**native title determination** When all the people who use that land, like the station owner, mining company and the government, agree about the claim, the Federal Court judge can make a native title consent determination.

Then, the Federal Court judge says that whitefella law recognises the traditional laws of the people connected to that country.

**native title holder** A person who is connected to their traditional country by their traditional law. The person is part of a group that belongs to country. That group has native title recognised and so does that person.

**prescribed body corporate PBC** An Aboriginal corporation that looks after native title for native title holders.

**pastoral lease** To lease is another word for rent.

The cattle station has a lease over Crown land. Crown land is owned by the government.

# Some hard words about native title

## government

The groups of people that run Australia. Their job is to make rules to keep things fair and working well. There are 3 levels of government in Australia:

1. Australian Government, in Canberra
2. state and territory governments, like the Northern Territory Government
3. local government, Alice Springs Town Council.

## Act

This is a government law book. It says what people can and cannot do. For example, the Native Title Act has the rules about native title. The CATSI Act has the rules about Aboriginal corporations.

## Sacred Sites Act

This is the Northern Territory law about sacred sites. Everyone, Aboriginal people and whitefellas, has to follow the rules in the Sacred Sites Act.

## Office of the Registrar of Indigenous Corporations ORIC

ORIC is the regulator for Aboriginal corporations. ORIC makes sure that PBCs follow the rules in the CATSI Act and the Native Title Act.

## National Native Title Tribunal

The court that makes decisions when native title holders and other people cannot agree.

## research

Looking for information to learn and understand something.

## negotiation negotiate

Talking together to try to make an agreement.

# What is native title?

Aboriginal people have been here and looking after country forever.

Then, more than 250 years ago, England took over Australia with their own law, called terra nullius.

Terra nullius means land that belongs to no one.

In 1992 the High Court of Australia said that terra nullius in Australia was wrong.

The government made a law called the Native Title Act.

This law says everyone in Australia has to recognise the traditional law of Aboriginal and Torres Strait Islander people who have always been on this land.



Native title makes sure that whitefella law sees that Aboriginal people are still here. It tells everyone that we have our connection to country and our traditional law.

# What can native title holders do?

Here are some things most people can do with native title.



You can go on country.



You can camp on country.



You can get water from soakages, waterholes and rivers.



You can take anyone to your country to help with cultural activities and research.



You can get bush tucker, wood, ochre and other natural resources.

You can give people a present from the country.



You can make a campfire.



You can hunt and fish native and feral animals.



You can look after and protect sacred sites and important places.



You can talk about a project like mining and try to make an agreement.



You can say how other Aboriginal people use your country.



You can teach, hold meetings, ceremonies and funerals on country.

You can put someone's grave on country if you get approval from the Northern Territory Government.



There is a cattle station on my country. I do not have native title recognised yet. What rights do I have on my country without a native title determination?

You have rights even if you do not have a native title determination. The Pastoral Land Act and the pastoral lease say you can go on your country when there is a cattle station.

But there are some rights you can only get if you have a native title determination. Like, the right to talk up about how people use that land for things that are not cattle business.



# The Aboriginal Land Rights Act and the Native Title Act

The Aboriginal Land Rights Act and the Native Title Act are 2 important laws about land.

## Aboriginal Land Rights Act

This law was made in 1976.

This law is only for people in the Northern Territory.

The traditional owners of the country are also the owners of the country under whitefella law.

The traditional owners of country decide what happens on the country.

Aboriginal people cannot make any new Aboriginal land rights claims.

## Native Title Act

This law was made in 1993.

This law is used everywhere in Australia.

The government owns the country.

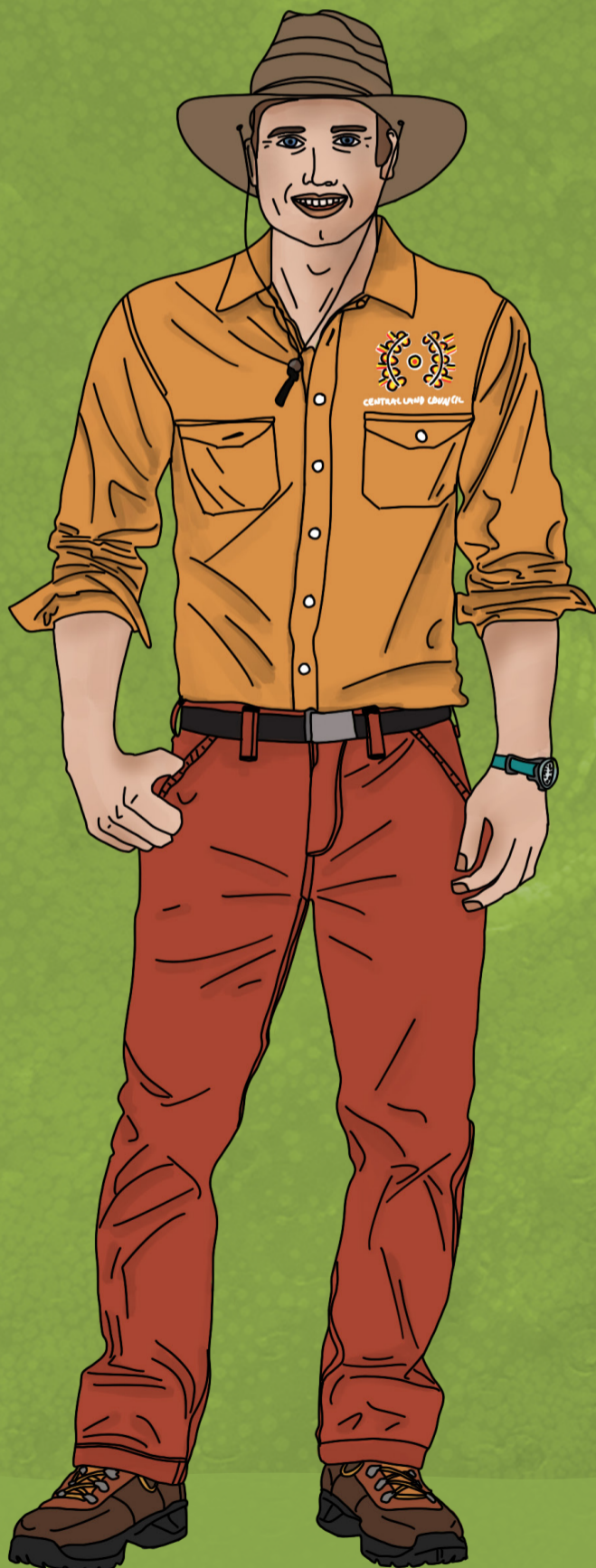
People connected to country can try to make agreements when someone wants to do something on country.

If the land does not have native title, Aboriginal people can make a new native title claim there.





Land rights is stronger than native title rights. With native title, we do not own the land. We have to share our country with station mob and others. Why can I not get land rights?



You cannot make new land rights claims. Making land rights claims stopped in 1997. This was called a sunset clause.

Native title can be on station land and even some towns. It is not strong like Aboriginal land rights, but it is better than not having native title rights.

# What land can have native title recognised?

Some land can have native title recognised. Some land cannot have native title recognised. Native title has to respect:

- the rights of the people connected to country
- the rights of all the people who use that land.



Most of the time, this land can have native title recognised

**Crown land** This is government land. People can lease Crown land but most of the time, they cannot buy it.

**pastoral lease** Land that station owners rent from the government for cattle business. They have to share that land with other people.

**mining lease** Land that mining companies rent from the government for mining. They have to share that land with other people.

**reserve** Crown land that the government keeps to use for something later. It could be for things like building a school or a watering place on a stock route.

**conservation land** Crown land that the government keeps for looking after important plants and animals.



Most of the time, this land cannot have native title recognised

**freehold land** Land that is owned by one person or a group of people. They control that land.

**leased land** Land that a person rents from the government to live on or to run a business. They control that land.

**Land Rights land** Aboriginal people already have strong rights on land that has Land Rights. So, there is no reason to also claim native title.



# 2 types of native title rights

## 1. Exclusive possession native title

This type gives native title holders stronger rights. It says that only the people connected to that country can go on that country.

Any other person who wants to go on that country has to ask the native title holders or the government.



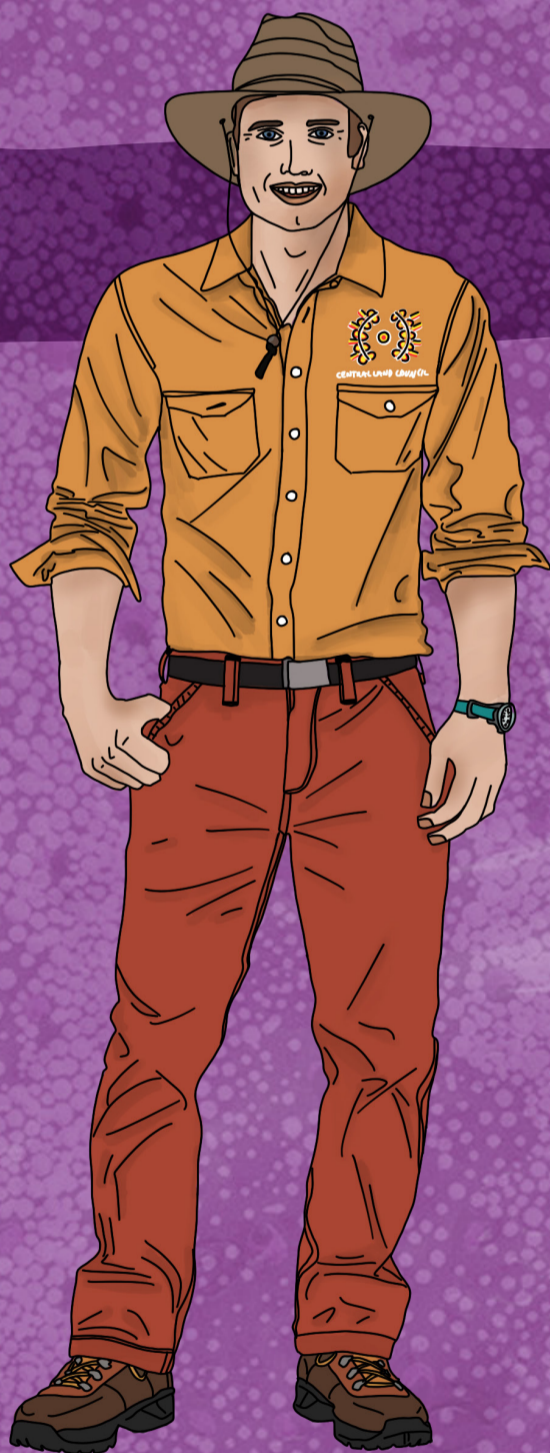
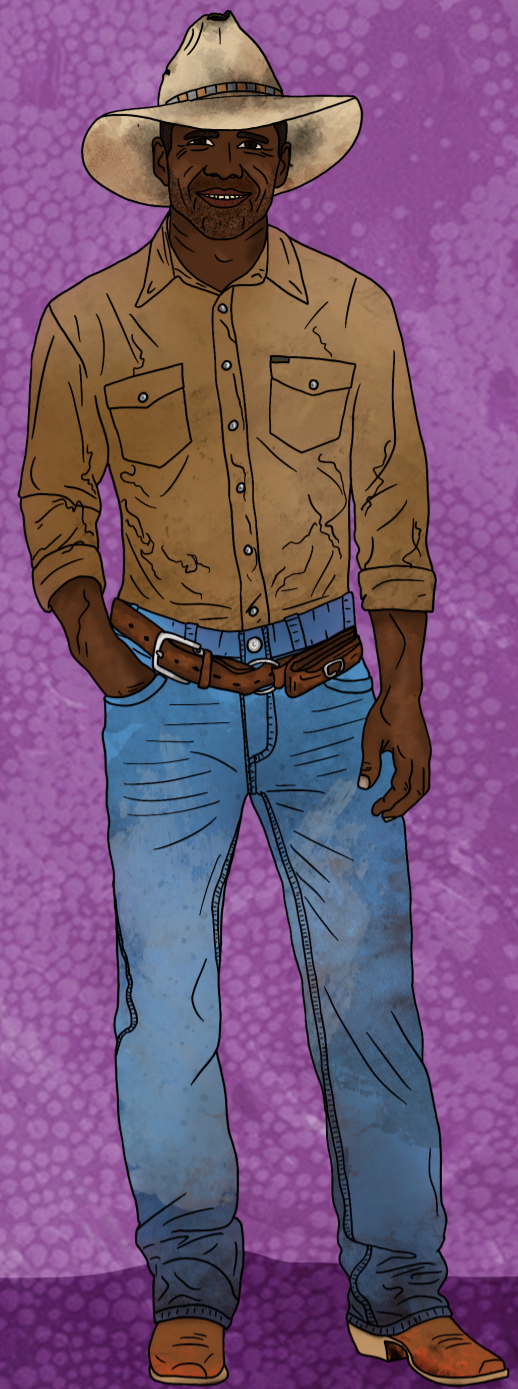
## 2. Non-exclusive native title

This type means native title holders have to share the country with other people, like the government and cattlemen.

Most of the land in the CLC region that has native title recognised is non-exclusive native title.



There is land in the CLC region that could have native title recognised. Why is our native title not recognised yet?



The Native Title Act says how to get native title recognised by whitefella law.

CLC works on a native title claim for 5 years, 10 years, or longer. This is because:

- it takes a long time
- there are only a few people who can do the native title claim jobs
- native title claims cost a lot of money.

When CLC decides what land to claim for native title, it looks at things like:

- if the old people are getting sick and might pass away, or
- if a big mine is going to happen on that land.

**Tell CLC why it is important to start a native title claim for your country.**

# What is a native title representative body?

A native title representative body is an organisation that works for Aboriginal and Torres Strait Islander people on native title business.

The Minister for Indigenous Australians decides if an organisation can be a native title representative body.

Native title representative bodies do these 4 main jobs to get native title recognised.

## 1. Facilitation and assistance

Working with people connected to country traditional way to get native title recognised by whitefella law.



## 2. Certification

Making sure information in the native title claims is straight and true.



## 3. Dispute resolution

Working with people to fix problems about something in the native title claim.

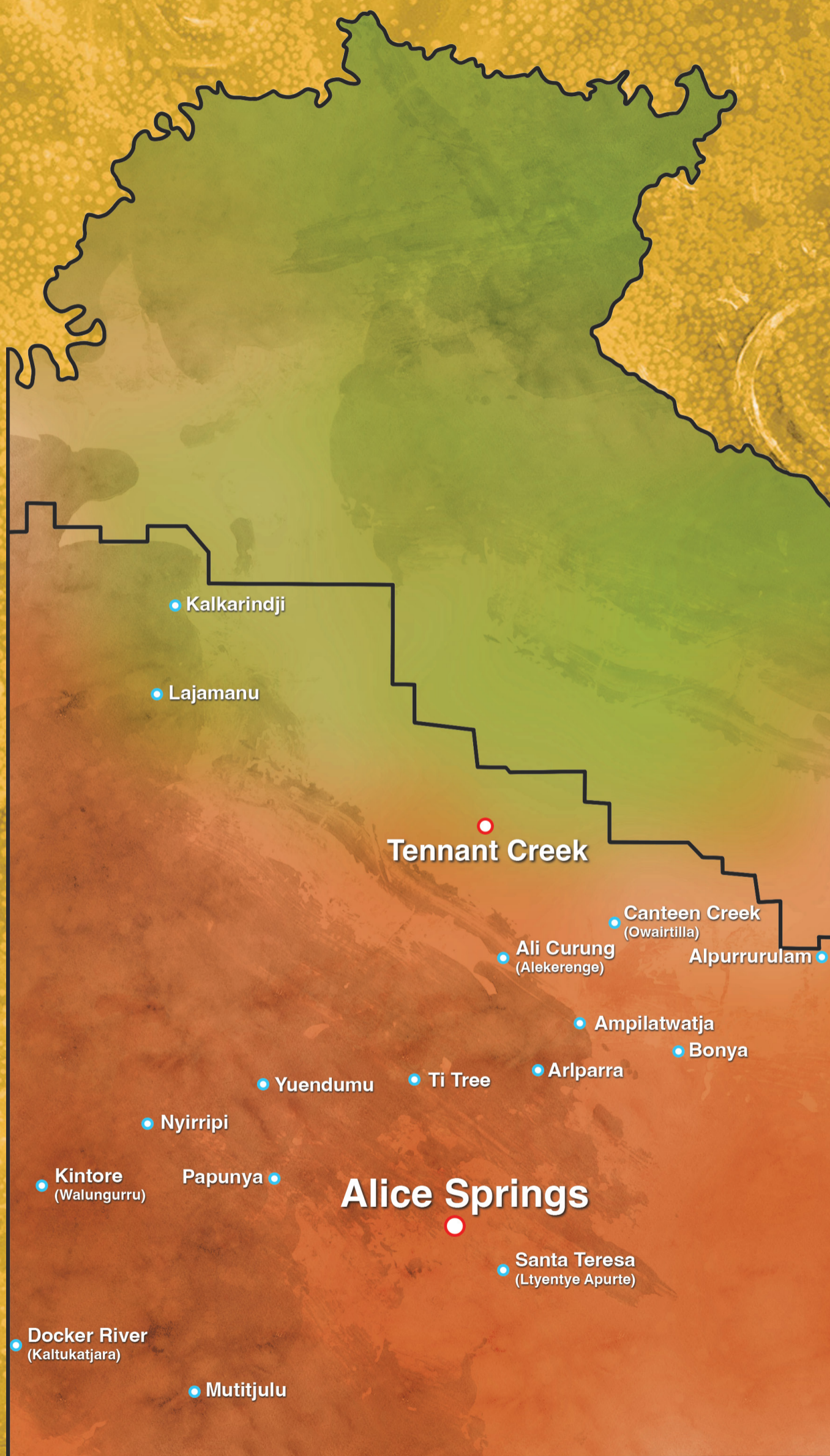


## 4. Research

Bringing together information about who is connected to country.



CLC is the native title representative body for the southern part of the Northern Territory.



# What are the main jobs to get native title recognised?

1. Research



2. Court



3. PBC and recognition

## 1. Research



Getting information on all the stories about that country:

- traditional law
- sacred sites and important places
- how people use that country.

The claim has to show that people still follow the traditional law way on their country.

## 2. Court



Lawyers give the native title claim to the Federal Court.

The lawyers talk to:

- the Federal Court
- the Northern Territory Government
- station owners
- other people who use the land and water, like mining and phone companies.

The lawyers ask them to agree that the people with connection to country have native title rights for that land.

## 3. PBC and recognition



The people with connection to country for that land have to make an Aboriginal corporation. That corporation is called a prescribed body corporate, or PBC.

Then, the judge comes out on country. The judge hands down the native title decision and recognises all the people who belong to that country traditional way. This is called a native title determination.



# Native title claim jobs

There are many jobs to get native title. A lot of people have to work together. The CLC checks that all the people do their job and work together.

## Claimants

The people connected to country who want their native title recognised. The elders are the most important claimants. They are the elders past, present and future.

The claimants give information about connection to country and how they still follow traditional law. They tell lawyers what to do about big problems.

## Applicant

A person or a small group who represent all the claimants. They only make decisions when all the right people agree.

They sign papers for the claim. They might tell lawyers what to do about small problems.

## Native title representative body

The organisation that works for Aboriginal people with native title business.

It makes sure the native title claim work happens.

## Anthropologists

People who bring the information together about Aboriginal culture and how the land and water is used.

They write the connection report.

## Lawyers

People who know the Australian laws. They know a lot about native title law.

They give advice and help write the claim. They represent the applicant in court.



## **National Native Title Tribunal**

The court that is about native title business.

It checks if all the information is in the claim. It also keeps a list of all the claims. It makes decisions when people who use the land cannot agree.

## **Federal Court**

The court that makes decisions about native title claims.

It decides what native title rights people can have recognised by whitefella law.

## **Government representatives**

People who speak up for the government.

In the CLC region, the Northern Territory Government has to give information about how people use the land and water in the claim. Sometimes, the regional council and Federal Government also speak up about how they use that land and water.

## **Other land users**

Anyone else who uses the land, like cattlemen or a mining company.

They give information about how they use the land and water in the claim. They read the claim and decide if they agree with it.

## **Expert witnesses**

People who have special knowledge and tell the judge what they know.

Expert witnesses might be:

- anthropologists
- linguists, who know about languages on that country
- archaeologists, who know about what things were found on that country from a long time ago, like rock art or spearheads made from stone.

# What happens when CLC makes a native title claim?

## Instructions meeting

People connected to country tell CLC to make the native title claim.

1

## Research

People connected to country and anthropologists bring information about country together.

2

## Proofing meeting

People connected to country check the research is straight and true.

3

## Native title determination application

Anthropologists and lawyers check the research. Then, the lawyers write the native title determination application. This is the paper that asks the Federal Court to recognise native title.

4

## Authorisation meeting

People connected to country check the application is straight and true. They also decide who will be the applicant. The applicant is the person or group of people who will sign the application.

5

## PBC establishment

People connected to country make the prescribed body corporate, or PBC. The PBC will hold the native title rights if the judge says "yes" to the claim.

6

7

**Sending the native title determination application**  
The lawyer sends the application to the Federal Court.

**Federal Court**

The Federal Court tells the National Native Title Tribunal about the application.

8

**National Native Title Tribunal**

National Native Title Tribunal registers the application. This means it decides if it will add the application to the list of all native title claims.

9

**Other land users**

All the other land users can choose to tell the Federal Court about what they want for that land.

10

**Negotiations**

All the land users negotiate. They need to try to agree about what native title rights whitefella law will recognise.

11

**If they agree:**

The Federal Court decides on a date for the native title **consent** determination.

**If they do not agree:**

Mediators help the land users try to agree.

**If they agree:**

The Federal Court decides on a date for the native title **consent** determination.

**If they do not agree:**

All the land users fight about the native title rights in court. Then, the judge decides what rights to recognise. This is called a **litigated native title determination**.



# What is a litigated native title determination?

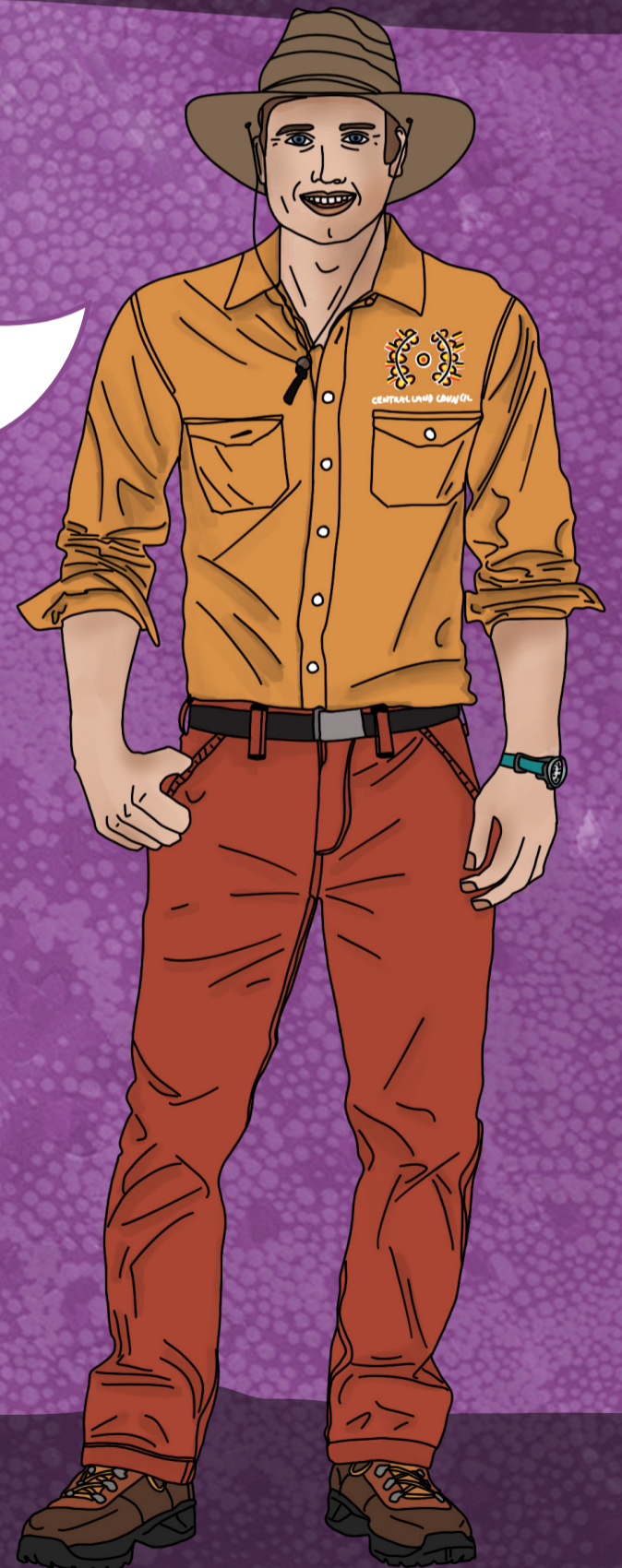
In a litigated native title determination, the judge decides about everything that the land users cannot agree on. So, the judge can decide to:

- say "yes" to everything the people connected to that country want
- say "yes" to some things the people connected to that country want, and say "no" to other things
- say "no" to all the things the people connected to that country want.

A litigated native title determination is a lot more work, more time and more money.

Most of the native title claims in the CLC region have a native title consent determination. But sometimes, not everyone agrees. Then, it can become a litigated native title determination.

Starting litigation is a big decision. Lawyers will give you a lot of advice before you decide about doing litigation.



Another word for litigated is contested.

# Every claim is different

Some claims are big. Some claims are small. There are good and bad things for both types of claims.

A big claim area means more people will get native title. But it takes more time. Some people might not know each other well.



Every country is different. So, every claim is different.

The people connected to that country decide what land to claim. CLC helps them to look at all the different things to make that decision.

# Things that happen at every claim meeting

There are a lot of meetings to make a native title claim. Every meeting is a bit different, but there are some things that happen at every meeting.

## Attendance list

Someone makes a list to show:

- who was at the meeting
- that there were enough of the right people to make decisions at the meeting.

## Making decisions

People at native title claim meetings have to make decisions in the traditional way. If there is no traditional way, they have to agree on another way.

The CLC and the Federal Court need to know:

- that the right people made the decisions
- how they made the decisions.

## Asking questions

People can ask questions about native title and the native title claim.

Anthropologists, lawyers and other staff will answer the questions.

## Planning and logistics

It takes a lot of people, planning, cars, food, and things like that to do native title claim work.



Sometimes, when some people connected to country cannot come to a meeting, the meeting can still happen.

# 1

## Instructions meeting

People connected to country tell CLC to make the native title claim.

instruction                      To tell someone to do something.

### Who goes to the instructions meeting?

- people connected to country, especially elders and people with strong traditional knowledge
- lawyers
- anthropologists
- other CLC staff.

At the instructions meeting, the people connection to country might tell CLC:



We want CLC to work with us to get that native title for that country recognised by whitefella law.

People can say "no" to CLC working on a native title claim for their country.

# 2

## Research

Anthropologists get information on all the stories about that country.

Aboriginal people already know what is true. But the court needs someone to write the stories down to show that the stories are true. This is called proof or to prove.

The job of the anthropologists is to bring all the information together to prove:

- who is connected to that country
- who all the different landholding groups are on that land
- how people connected to country use that land
- how they follow the traditional law way on their country.

### Anthropologists do 2 types of research

#### desktop research

To find information in books or on computers, like:

- when and where people were born
- who lived and worked on the station
- stories from explorers, missionaries and pastoralists
- CLC reports and land claims.

Desktop research is sometimes called archival research.

#### field research

To go on country and bring the information together about country.



CLC knows that visiting country is the right way to learn about the sacred sites and important places. We understand that being on country is the best place to talk about stories.



## Anthropologists write a connection report

The connection report is for the Federal Court. It says:

- who the native title holders are
- how they are connected to the native title claim area
- what traditional laws they follow
- what native title rights whitefella law will recognise.

Not all the stories the anthropologists bring together go in that connection report.



CLC keeps all the information safe.

# 3

## Proofing meeting

People connected to country check the research is straight and true.

At the research proofing meeting, the anthropologists share all the information they found.

### Who goes to the proofing meeting?

- people connected to country
- anthropologists
- other CLC staff.

### What happens at the proofing meeting?

The people connected to country:

- ask questions about the research
- tell the anthropologists if all the information in the connection report is straight and true for their country group
- try to fix information if they do not agree that it is straight and true.

It is important for everyone to work together on the native title claim. Sometimes people have different stories about the country and about who is connected to the country. It is important to listen to everyone.



# 4

## Native title determination application

A different anthropologist checks the connection report. They make sure it has all the information for the report. Then, they tell the anthropologist who wrote the report that it is ready.

Then, lawyers also check the report is written in the proper way for the court.

Sometimes, if someone thinks something is missing, the anthropologists have to do more research. The anthropologists keep working until the information is right.



When the report is finished, the lawyer writes the native title determination application. This is the paper to ask the court for whitefella law to recognise native title. The lawyer uses the information in the connection report to write the application.

# 5

## Authorisation meeting

It is important that everyone who belongs to that country knows about the authorisation meeting. It is good to have many elders and people with strong traditional knowledge at this meeting.



### Who goes to the authorisation meeting?

- people connected to country
- anthropologists
- lawyers
- other CLC staff.

### What happens at the authorisation meeting?

#### 1. Check the connection report

Anthropologists share all the information they learned.

The people connected to country:

- ask questions about the research
- tell the lawyer if all the information in the connection report is straight and true.

The anthropologists who wrote the connection report leave the meeting when the lawyer gives advice about the native title claim and when people make decisions about the application.

## 2. Check the application

The lawyer shows what is in the application.

The people connected to country do these things:

- ask questions about the application
- tell the lawyer if all the information in the application is straight and true.

If there is information in the application that is not right, they have to tell the lawyer. The lawyer can fix some things. But if there are bigger mistakes, then the anthropologists need to do more research and more work on their connection report.

The CLC helps when people cannot agree about something in the application.

## 3. Choose the applicant

When everyone agrees about the application, the people connected to country choose the applicant. The applicant is the person or group of people who represent all the people who want their native title rights recognised.

All the applicants have to make an affidavit. An affidavit is a true story that someone writes down so that lawyers can use it in court. The story in this affidavit is about a person's country and about the native title claim.

The people connected to country also tell the lawyer these things:

- the right way to make decisions about that country
- that all the right people to make decisions are at the meeting
- the rules for making decisions during the native title claim
- what name to call the native title claim.

# 6

## PBC establishment

The people connected to country have to make an Aboriginal corporation, or AC, to look after native title over their country. This is called a prescribed body corporate, or PBC.

### Who goes to the PBC establishment meeting?

- people connected to country
- anthropologists
- other CLC staff.



The people connected to country have to decide these things.

- 1. PBC name**  
The name has to be a good name for everyone.
- 2. PBC directors**  
The directors do the PBC jobs.
- 3. PBC contact person**  
This person gets all the letters and phone calls for the PBC.
- 4. PBC address**  
The address where all the mail for the PBC is sent to.
- 5. PBC rule book**  
The list of rules the PBC has to follow.

## There are 2 types of PBCs

### agent PBC



An agent is like when you give money and a shopping list to someone else to do the shopping for you. They have to spend that money on only the things in your shopping list.

The PBC is the native title holders' agent. The native title holders tell the PBC what to do. The PBC has to listen to native title holders and do what they say.

Native title holders make the decisions for an agent PBC. The right people talk up for the country and make decisions for their country.

### trustee PBC



A trustee is like when someone gets all the money from some people to go to the shop. The people do not say what to buy. The person with everyone's money, the trustee, decides what to buy and when to buy it. A good trustee will get good food and make sure everyone is looked after.

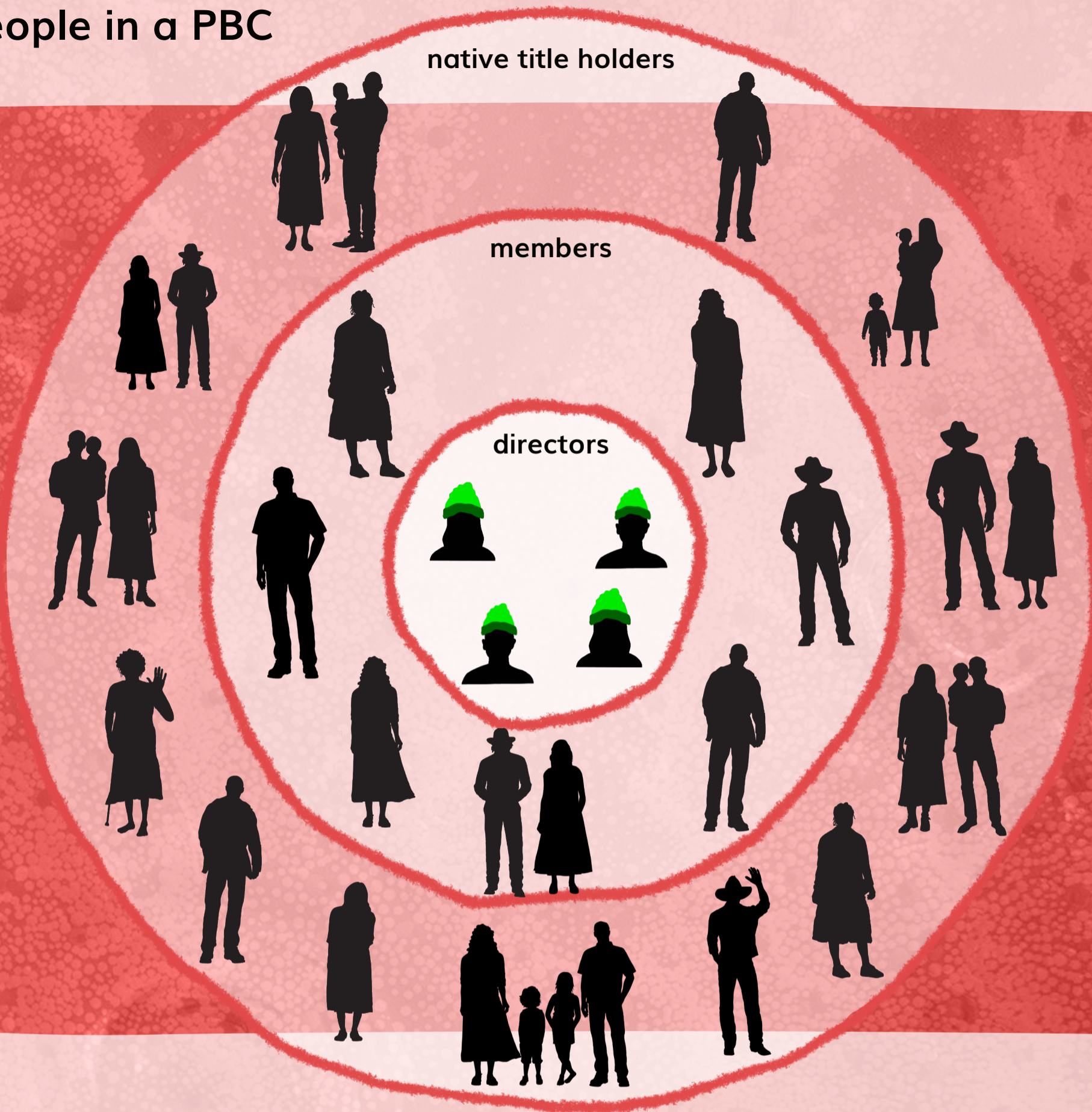
A trustee PBC makes a lot of decisions for the native title holders. But for decisions about country, the PBC still has to talk to the right people for that country.

## All the PBCs in the CLC region are agent PBCs.

CLC helps Aboriginal people before, during and after getting native title. After a native title determination, CLC can help PBCs with some things.

The PBC can ask CLC for a service agreement. Then, CLC can help the PBC with more things. A service agreement says what the PBC wants the CLC to do.

# People in a PBC



## native title holders



The judge hands down the native title determination. Then, every person connected to that country by their traditional law is called a native title holder.

## members



Someone who chooses to belong to the PBC has to be a native title holder and 18 years old, or older.

Members check that the directors are doing the PBC jobs.

## directors



Members choose a small group of members to do the PBC jobs. Directors have to work together and follow the rules in the rule book.



# Native title consent determination

This meeting is a proper court. The Federal Court recognises the native title holders for that country.

## Who goes to the native title determination?

- people connected to country
- Federal Court judge and other people from that court
- everyone who worked on the claim
- CLC staff
- Northern Territory Government lawyer
- people from the media, like tv and radio news reporters.

Sometimes, other people also come to show they respect native title. They might be people from the government, mining company or the cattle station who work on that land.

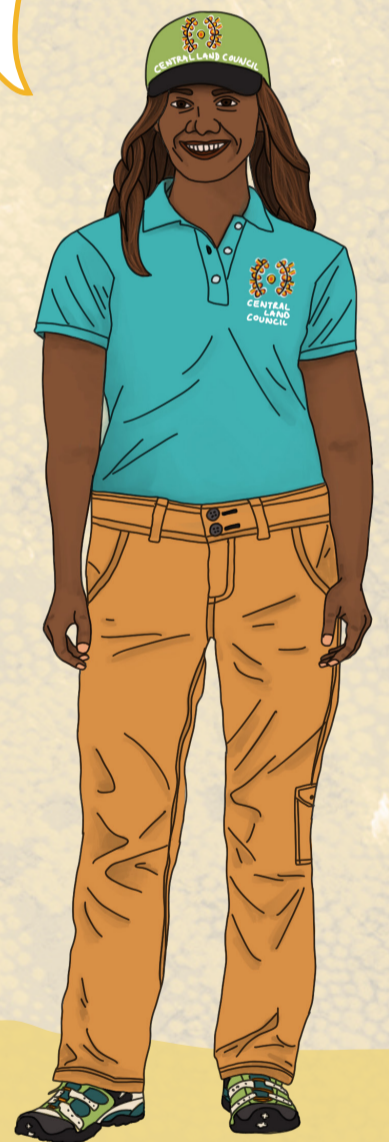
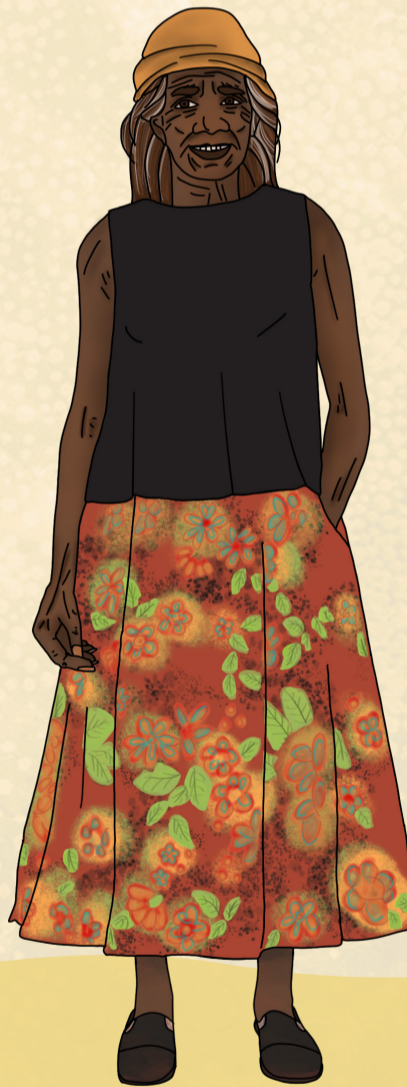
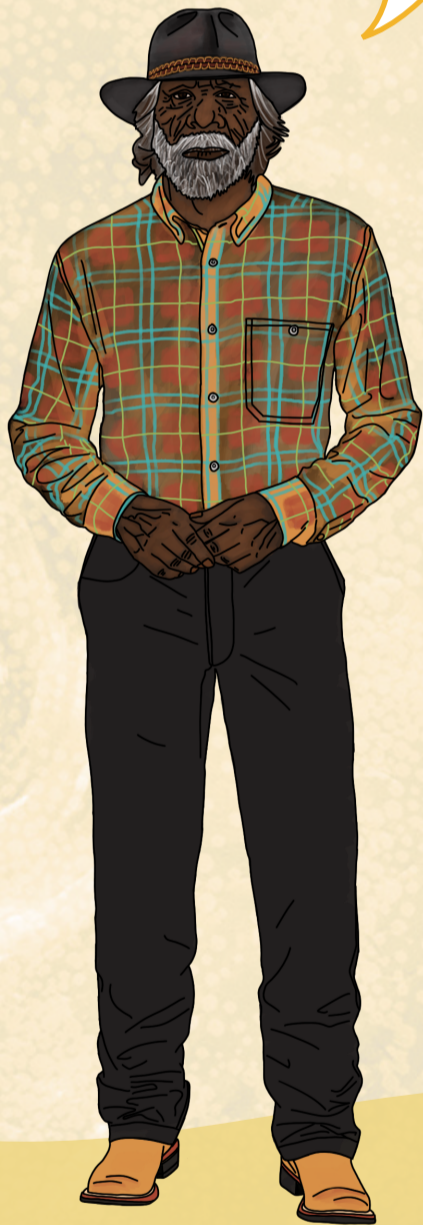
I am the Federal Court judge. I hand down the determination after all the land users agree. This means Australia recognises that you are still here on country. You still have your connection to country and your traditional law. These are called your native title rights.



At the determination, the government recognises that we and our ancestors are here and have always been on this country. It recognises that we have kept our traditions and culture strong since whitefellas came to Australia.

People can choose to start the meeting with a ceremony or an acknowledgement of country.

Getting native title recognised is a lot of work. So, CLC likes to bring a big cake to celebrate!



In the CLC region, the judges have held all native title consent determinations on country. They hold the determination on the claim area, or somewhere near it.



## The Acts in this book

- Native Title Act 1993 (Cth)
- Aboriginal Land Rights Act 1976 (Cth) (ALRA)
- Northern Territory Aboriginal Sacred Sites Act 1989 (NT)
- Pastoral Land Act 1992 (NT)
- Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act)





## **Central Land Council**

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